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In The

Supreme Court of the United States

October Term, 1997

IN RE PETER FRANCIS GERACI,

Petitioner

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

PETER FRANCIS GERACI, ESQUIRE
Counsel of Record
XIAOMING WU, ESQUIRE
Law Offices of Peter Francis Geraci
55 East Monroe Street
Suite 3400
Chicago, Illinois 60603
☎(312) 332-1800
Attorneys for Petitioner

Appellate Service: Curry & Taylor (800) 222-8738/Appellate@webtv.com

SIPP

Question Presented for Review

Did the lower courts err in holding that the appropriate standard for determining the reasonableness of attorney's fees in bankruptcy cases is the rate charged by competitors, rather than the customary compensation charged by comparably skilled practitioners in non-bankruptcy cases in the same locale where the bankruptcy attorneys practice?

Parties to the Proceeding in the United States Court of Appeals for the Seventh Circuit

Peter Francis Geraci, Appellant, by the Law Offices of Peter Francis Geraci, 55 East Monroe, Suite 3400, Chicago, IL 60603. Phone: (312)332-1800

Edward B. Hopper II, United States Trustee for Region 10, Appellee, by Sabrina M. Petesch, Office of the U.S. Trustee, 401 Main St., Suite 1100, Peoria, IL 61602. Phone: (309)671-7854

John E. Maloney, Trustee, Appellee, by John E. Maloney, Maloney & Davis, 135 W. Main St., P.O. Box 296, Urbana, IL 61801. Phone: (217)384-7111

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Citations of Opinions and Orders

The opinion of the United States Court of Appeals for the Seventh Circuit, *In the Matter of Peter F. Geraci*, 138 F.3d 314 (7th Cir. 1998), is set forth in Appendix, p. 1a. The opinion of the United States District Court for the Central District of Illinois, *Peter F. Geraci v. Edward B. Hopper II and John E. Maloney*, 208 B.R. 907 (C.D. Ill. 1997), is set forth in Appendix, 17a. The opinion of the United States Bankruptcy Court for the Central District of Illinois, Danville Division, *In re Aleta D. Chellino et al.*, Case No. 96-90941, Slip Op. (Bankr. C.D. Ill. December 27, 1996), is set forth in Appendix, 24a.

Basis for Jurisdiction in This Court

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on March 9, 1998.

There has been no order respecting rehearing or granting an extension of time to file the petition for a writ of certiorari.

This Court has jurisdiction to review the judgment in question on a writ of certiorari pursuant to 28 U.S.C. § 1254.

Rule 29.4(b) or (c) of this Court does not apply.

Statutes in Question

This case involves 11 U.S.C. §§ 329 and 330, which are set out verbatim in Appendix, 65a.

Statement of the Case

These cases all concern the standard by which courts determine the reasonableness of attorney's fees in bankruptcy cases pursuant to 11 U.S.C. § 329. On August 20, 1996, Chapter 7 Trustee John E. Maloney filed a Motion to Review Compensation of Debtor's Attorney Pursuant to Section 329 in *In re Chellino*, Case No. 96-90941 in the United States Bankruptcy Court for the Central District of Illinois, Danville Division. The United States Trustee filed a Motion to Show Cause on September 5, 1996 in the rest of the 12 cases involved on appeal, requesting that Petitioner "be directed to appear and show cause why the fees charged in those cases to the debtors were reasonable."

After a hearing on the two aforementioned motions, the Bankruptcy Court issued an opinion on December 27, 1996, holding that the fees charged by Petitioner for these cases exceeded the reasonable value of the services provided, primarily on the basis of the finding that Petitioner's fees were higher than those charged by Petitioner's local competitors. The court also ordered Petitioner to return any fees in excess of $800 in all of these cases to the respective debtors, and limiting the fees to be charged by Petitioner in all future cases filed in the Central District of Illinois, Danville Division, to $800 unless Petitioner files a detailed fee application. By their terms, the opinion and order do not apply to any other practitioners.

After an unsuccessful motion for reconsideration, Petitioner timely filed a Notice of Appeal to the District Court on February 10, 1997 pursuant to Fed. R. Bankr. P. 8001 and 8002, and the District Court approved a Supersedeas Bond filed by Petitioner, staying enforcement of the Bankruptcy

Court's December 27, 1996 Order pending appeal pursuant to Fed. R. Bankr. P. 8005 and 7062.

The District Court upheld the Bankruptcy Court on May 29, 1997, and the United States Court of Appeals for the Seventh Circuit affirmed the District Court on March 9, 1998.

The basis for federal jurisdiction in the United States Bankruptcy Court for the Central District of Illinois, Danville Division, the court of first instance, was 11 U.S.C. §§ 329 and 330.

Argument in Support of Petition

The lower courts erred in holding that the appropriate standard for determining the reasonableness of attorney's fees in bankruptcy cases is the rate charged by competitors, rather than the customary compensation charged by comparably skilled practitioners in non-bankruptcy cases in the same locale where the bankruptcy attorneys practice.

Section 329 of the Bankruptcy Code (11 U.S.C. § 329) is one of the most important provisions in the Code governing the relationships between debtors and their attorneys. Section 329(b) authorizes the bankruptcy court to cancel a fee agreement or order the return of any payment to the extent that it exceeds the reasonable value of the services provided.

In the past 10 years since Congress enacted the Code, this Court has never ruled on § 329. This appeal concerns the standard by which reasonableness is determined for purposes of § 329. In this case, the Seventh Circuit held that

the lower courts had correctly based their determination of the reasonableness of bankruptcy attorney's compensation on the fees charged by local competitors, rather than by non-bankruptcy lawyers in the same locale where the bankruptcy attorneys practice. By so ruling, the Seventh Circuit has decided an important question of federal law that has not been, but should be, settled by this Court, because the Seventh Circuit's ruling is in direct conflict with both the letter and the spirit of the Bankruptcy Code.

It is well established in case law that, in determining the reasonableness of bankruptcy fees pursuant to § 329, courts are guided by the non-exhaustive list of factors enumerated in § 330(a)(3) of the Code. *In the Matter of Wiredyne, Inc.*, 3 F.3d 1125, 1128 (7th Cir. 1993). Most of those factors were established in pre-Code case law, *see, e.g., Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), with the exception of § 330(a)(3)(E). That provision requires, not merely authorizes, courts to take into consideration the customary compensation charged by comparably skilled practitioners in nonbankruptcy cases in determining the reasonableness of the fees charged by a bankruptcy attorney.

The importance of § 330(a)(3)(E) cannot be overstated because it signifies the congressional abandonment of the traditional notion of economy of the estate in the area of compensation for bankruptcy practitioners, and represents a "significant departure from prior law with respect to the factors involved in determining a reasonable compensation." Lawrence P. King, 2 *Collier on Bankruptcy* ¶ 330.04[2] (15th ed. 1996). Legislative history contains the following language with regard to § 330 as finally proposed and enacted:

> [B]ankruptcy legal services are entitled to command the same competency of counsel as other cases. In that light, the policy of this section is to compensate attorneys and other professionals serving in a case under title 11 *at the same rate as the attorney or other professional would be compensated for performing comparable services other than in a case under title 11.* Contrary language in the Senate report accompanying S. 2266 is rejected, and *Massachusetts Mut. Life Ins. Co. v. Brock*, 405 F.2d 429, 432 (5th Cir. Fla. 1968)[1] is overruled. Notions of economy of the estate in fixing fees are outdated and have no place in a bankruptcy code.

124 Cong. Rec. S17,406 (daily ed. Oct. 6, 1978) (Joint Explanatory Statement) (Statement of Sen. DeConcini) (emphasis added). In overruling pre-Code case law based on the principle of the economy of the estate, the House Report stated:

> If that case[2] were allowed to stand, attorneys that could earn much higher incomes in other fields would leave the bankruptcy arena. Bankruptcy specialists, who enable the system to operate smoothly, efficiently and expeditiously, would be driven elsewhere, and the bankruptcy field would be occupied by those who could not find other work and those who practice bankruptcy law only occasionally

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[1] In *Brock*, the Fifth Circuit set an arbitrary limit on fees payable in bankruptcy cases by requiring fees to be determined based on notions of conservation of the estate and economy of administration.

[2] *In re Beverly Crest Convalescent Hospital, Inc.*, 548 F.2d 817 (9th Cir. 1976, as amended 1977).

> almost as a public service. Bankruptcy fees that are lower than fees in other areas of the legal profession may operate properly when the attorneys appearing in bankruptcy cases do so intermittently, because a low fee in a small segment of a practice can be absorbed by other work. Bankruptcy specialists, however, if required to accept fees in all of their cases that are consistently lower than fees they could receive elsewhere, will not remain in the bankruptcy field.

H.R. Rep. No. 95-595, at 329-30, 95th Cong., 1st Sess. 330 (1977); *reprinted in* 1978 U.S.C.C.A.N. at 6286.

Many courts, including the Seventh Circuit itself, have acknowledged the importance of § 330(a)(3)(E) in fee reviews. *See, e.g., In the Matter of UNR Industries, Inc.*, 986 F.2d 207, 210 (7th Cir. 1993) ("We would emphasize that section 330 of the Bankruptcy Reform Act of 1978 requires lawyers in bankruptcy matters to receive the same compensation as they would earn in performing similar services outside the context of bankruptcy"); *In re Busy Beaver Bldg. Construction, Inc.*, 19 F.3d 833, 849 (3d Cir. 1994) (the "unambiguous policy inspiring § 330(a) . . . is that professionals and paraprofessionals in bankruptcy cases should earn the same income as their non-bankruptcy counterparts"); *In re McCombs*, 751 F.2d 286, 288 (8th Cir. 1984) (Congress intended to "provide sufficient economic incentive [to lure competent bankruptcy specialists] to practice in the bankruptcy courts"); *In re Yermakov*, 718 F.2d 1465, 1471 (9th Cir. 1983); *In re Smith*, 48 B.R. 375, 381 (Bankr. C.D. Ill. 1984); *In re Raytech Corp.*, 206 B.R. 646 (Bankr. D. Conn. 1997) ("In promulgating § 330, Congress intended to nullify any distinction in the area of compensation between

bankruptcy attorneys and their nonbankruptcy counterparts").

The record contains affidavits regarding fees of non-bankruptcy practitioners, all equivalent to or higher than what Petitioner charges. Even if the Seventh Circuit finds this evidence insufficient, it should have upheld the legal standard mandated by the Code, vacated the lower court's judgments, and remanded the case for further proceedings consistent with such standard.

In a nation where more than a million bankruptcy cases are filed each year, the superior quality of services by attorneys is critical to the smooth operation of the bankruptcy system and the financial well-being of the citizens. The Seventh Circuit's ruling in the instant case has departed from the well-established jurisprudence, directly contradicts the Bankruptcy Code, and has a chilling effect on bankruptcy practitioners. Congress did not want bankruptcy attorneys to be treated like this, and said so. If this case "were allowed to stand, attorneys that could earn much higher incomes in other fields would leave the bankruptcy arena." H.R. Rep. No. 95-595, at 329-30, 95th Cong., 1st Sess. 330 (1977).

WHEREFORE, Petitioner requests that this Court grant the petition for a writ of certiorari, reverse the Seventh Circuit, and compel the lower courts to follow the law.

Respectfully submitted,

Peter Francis Geraci, Petitioner
The Law Offices of Peter Francis Geraci
55 E. Monroe Street, Suite 3400
Chicago, IL 60603
(312)332-1800
Attorneys for Petitioner

IN THE MATTER OF: PETER FRANCIS GERACI, Appellant.

No. 97-2393

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

138 F.3d 314; 1998 U.S. App. LEXIS 4109; Bankr. L. Rep. (CCH) P77,649; CCH Unemployment Ins. Rep. P77,649

October 27, 1997, Argued
March 9, 1998, Decided

PRIOR HISTORY: Appeal from the United States District Court for the Central District of Illinois. No. 97 C 2057. Harold A. Baker, Judge.

DISPOSITION: AFFIRMED.

COUNSEL: PETER F. GERACI, Appellant, Pro se, LAW OFFICES OF PETER FRANCIS GERACI, Chicago, IL USA.

For EDWARD B. HOPPER, II, Appellee: Sabrina M. Petesch, OFFICE OF THE UNITED STATES TRUSTEE, Peoria, IL USA.

JUDGES: Before CUMMINGS, EASTERBROOK, and ROVNER, Circuit Judges.

OPINION BY: ROVNER

OPINION: ROVNER, Circuit Judge. Peter Francis Geraci appeals an order entered by Bankruptcy Judge Gerald D. Fines in twelve consumer bankruptcy cases where Geraci's law firm served as debtor's counsel. Judge Fines consolidated the cases for the purpose of considering whether Geraci's fees exceeded the "reasonable value" of his firm's services under 11 U.S.C. § 329(b). After conducting a hearing and determining that Geraci's fees in fact were excessive, Judge Fines ordered Geraci to return to his clients that portion of his fee that exceeded $800. Judge Fines further ordered Geraci to submit a detailed fee itemization in all pending and future no-asset consumer cases in which he receives a fee exceeding that amount. *In re Chellino*, 209 B.R. 106, 124-25 (Bankr. C.D. Ill. 1996). Under Judge Fines' order, then, a fee of $800 or less will be considered presumptively reasonable in a no-asset consumer bankruptcy, but in order to receive a higher fee, Geraci will be required to establish its reasonableness by documenting the legal services provided. Upset at being ordered to disgorge a portion of fees that he says were fairly negotiated in the marketplace, Geraci appealed the bankruptcy court's decision to the district court, but that court agreed with Judge Fines and thus affirmed his order. *Geraci v. Hopper*, 208 B.R. 907 (C.D. Ill. 1997). Geraci now takes a further appeal, invoking this court's jurisdiction under 28 U.S.C. § 158(d). We likewise affirm.

I.

Each of the twelve cases presently before us is a consumer bankruptcy filed by the Geraci firm under Chapter 7 of the Bankruptcy Code. Judge Fines characterized the cases as "relatively simple, no asset matters requiring minimal

attorney time. *Chellino*, 209 B.R. at 121.[1] The record reveals that Geraci originally charged the debtors in the twelve cases a flat fee of between $1,095 and $1,900.[2] The Chapter 7

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1 Geraci told the bankruptcy court, in fact, that he "rarely, if ever, files an asset case." 209 B.R. at 120.

2 Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), Geraci was required to file a statement of the compensation he had received or would receive from his clients in connection with these cases. Section 329(a) provides that:

> Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

11 U.S.C. § 329(a). Rule 2016(b) implements that directive:

> Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 15 days after the order for relief, or at another time as the court may direct, the

trustee in one of the cases asked the bankruptcy court to review Geraci's $1,095 fee under section 329, and that led the United States Trustee to begin investigating the fees Geraci had charged in other Chapter 7 cases. Believing that those fees were unreasonably high in light of the uncomplicated nature of the cases at issue, the United States Trustee invoked Bankruptcy Rule 2017 to challenge the fees charged in the eleven additional cases before us. See also 11 U.S.C. § 307 (authorizing the United States Trustee to appear in such cases). The bankruptcy court conducted an initial hearing on the fee dispute and then ordered Geraci to submit a detailed itemization of the services provided by his firm for each of the twelve debtors. Geraci's initial response to the court's order did not detail those services at all, but instead included a diatribe directed against the Trustee and

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> statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 15 days after any payment or agreement not previously disclosed.

Bankr. R. 2016(b). Geraci's statements reveal that his compensation in the twelve cases ranged from a low of $1,095 in four of the cases to a high of $1,900 in a single case.

bankruptcy practitioners in the Central District of Illinois. Geraci concluded his response with a request that the Trustee be held in contempt for attempting to fix prices in consumer bankruptcy cases. Eventually, however, Geraci complied with the court's order by filing the fee itemizations, and the bankruptcy court then conducted a further hearing.

On December 27, 1996, the bankruptcy court issued a detailed opinion addressed to the fee issue. The court began by criticizing Geraci's fee itemizations because they failed to sufficiently describe the particular services performed and because they included a $75 per hour charge for "clerk time," which the court deemed to be non compensable office overhead. *Chellino*, 209 B.R. at 114 & 123-24. Despite that, Judge Fines was able to glean the following from Geraci's fee itemizations:

> From its review of the twelve cases at bar, the Court concludes that, while these cases involve different debtors, different creditors, and other subtle differences, these cases are essentially the same type of case. These cases are all simple, no asset Chapter 7 cases that involved very little time in Court. Only one of the cases had a priority creditor, and all of the cases had relatively few total creditors. No motions to avoid liens were filed in any of these cases, and there were only two cases in which there were motions filed relating to anything other than the issue at hand. Some reaffirmations were filed in these cases, but the number filed in each case was relatively normal. In all but one case, the number of reaffirmations actually filed was less than the

> number that Debtors stated they intended to file. In all but one of the cases, the only other Court appearance by Debtor's Counsel, besides the § 341 hearing, was on the fee matters at bar.

Id. at 114. The bankruptcy court then looked to the criteria delineated in 11 U.S.C. § 330 for the compensation of professionals and addressed those criteria in the context of carefully considering each of the twelve factors set out in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), for assessing the reasonableness of an attorney's fee. With respect to the fifth *Johnson* factor--the customary fee in similar cases--the bankruptcy court found from evidence presented by the Trustee and from his own review of court records that the average fee charged in the locale for a no-asset consumer bankruptcy was $550. *Chellino*, 209 B.R. at 120-21. The court then found that neither the experience, reputation, and ability of the attorneys from the Geraci firm, nor the results they had been able to obtain for their clients, justified the significantly higher fees they had charged. Judge Fines noted that although Peter Francis Geraci described himself to the court as the "foremost consumer bankruptcy practitioner in the country," the attorneys whose names appear most on the fee itemizations in question and the attorneys who have appeared before this Court are relatively inexperienced. Neither the fee itemizations or the experience of this Court indicate that Mr. Geraci himself has spent any significant amount of time on the cases at hand. The work product of Debtors' Counsel is not extraordinary. It is not outstanding. It is not up to a level that this Court sees from the majority of practitioners who regularly appear before it.
Id. at 122 (footnote omitted). Judge Fines further found that the results the Geraci firm had been able to obtain for its

clients in the twelve cases were nothing out of the ordinary:

> Mr. Geraci argues that his firm provides top-notch service. However, as the Court has noted, the fee itemizations and the Addendum to those fee itemizations do not support a finding that superior, expert service was provided to the Debtors in the cases presently before the Court. No outstanding results were achieved in these cases, and the Court finds no extraordinary benefits for either the Debtors or their creditors. The cases presently before the Court would have seen the same result had the services been performed by any competent counsel in a competent manner.

Id. at 121. Based upon these findings, the bankruptcy court concluded that the reasonable value of the Geraci firm's services in each of the twelve cases was $800. The court noted that the $800 figure was $250 more than the $550 average charged for similar services in the relevant locale. The court therefore ordered Geraci to return to each debtor that portion of his fee that exceeded $800. The court made its order applicable to all present and future cases filed in that court by the Geraci firm, meaning that Geraci either could accept a presumptively reasonable fee of $800 in no-asset consumer bankruptcy cases under Chapter 7, or file a detailed fee itemization in support of a higher fee. *Id.* at 124. When Geraci then appealed to the district court pursuant to 28 U.S.C. § 158(a), that court affirmed Judge Fines' order in its entirety.[3]

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3 Having successfully challenged Geraci's fees before Judge Fines, the United States Trustee then brought similar challenges before other bankruptcy judges in the Central and Southern Districts of Illinois. The Trustee's actions have resulted in a series of orders similar to the one we consider here. *See In re Crivilare*, 213 B.R. 721, 724 (Bankr. S.D. Ill.

II.

In ordering Geraci to return a portion of his fee to each of the twelve clients here, the bankruptcy court acted pursuant to 11 U.S.C. § 329(b) and Bankruptcy Rule 2017. Section 329(b) authorizes the court to assess the reasonable value of the services counsel provided to the debtor and to compare that value with the amount the debtor paid or agreed to pay for the attorney's services. If the court determines that the fee charged by the attorney is excessive--i.e., that it exceeds the reasonable value of the services provided--then it may cancel any compensation agreement between the attorney and his client, or it may order the return of the excessive portion of the fee to the debtor's estate or to the entity making the payment. 11 U.S.C. § 329(b); *see In re Wiredyne, Inc.*, 3 F.3d 1125, 1127 (7th Cir.1993); *see also In re Mahendra*, 131 F.3d 750, 758 (8th Cir. 1997); *In re Hargis*, 895 F.2d 1025, 1025 (5th Cir. 1990). In making the "reasonable value" determination, the bankruptcy court is to be guided by section 330 of the Bankruptcy Code, which sets forth a number of factors that Congress deemed relevant to an assessment of the value of professional services. *See*

1997) (Meyers, J.) (fee of $700 presumptively reasonable; detailed fee itemization required for fees exceeding that amount); *In re Michaelson*, No. 96-83059, slip op. (Bankr. C.D. Ill. July 31, 1997) (Altenberger, C.J.) (fees over $900 require detailed fee itemization); *In re Day*, No. 96-7294, slip op. (Bankr. C.D. Ill. Mar. 6, 1997) (Lessen, J.) (fees over $600 require detailed fee itemization), *aff'd*, 213 B.R. 145 (C.D. Ill. 1997). Geraci is refusing to take the Trustee's challenges to his fees lying down, however. He told us at oral argument that fee orders in 72 cases already have been appealed to this court and that approximately 400 more appeals are on their way.

Wiredyne, 3 F.3d at 1128; *In re Basham*, 208 B.R. 926, 931 (B.A.P. 9th Cir. 1997); Lawrence P. King, *Collier on Bankruptcy* ¶ 329.04[1][c], at 329-19 (15th ed. 1996).

Once a question has been raised about the reasonableness of the attorney's fee under section 329, it is the attorney himself who bears the burden of establishing that the fee is reasonable. *Mahendra*, 131 F.3d at 757; *Basham*, 208 B.R. at 931- 32; *Collier on Bankruptcy* ¶ 329.05[6], at 329-28; *see also In re Kenneth Leventhal & Co.*, 19 F.3d 1174, 1177 (7th Cir. 1994) (accounting firm had burden of proving its entitlement to fees and expenses under 11 U.S.C. § 330). Because fee determinations under section 329 rest within the sound discretion of the bankruptcy court, we will disturb an order requiring the return of an excessive fee only upon finding that the bankruptcy court abused its discretion. *Wiredyne*, 3 F.3d at 1128; *Basham*, 208 B.R. at 930; *see also Kenneth Leventhal & Co.*, 19 F.3d at 1177. And we may make that type of finding only if we are convinced that no reasonable person could agree with the bankruptcy court. *See In re Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 78 F.3d 285, 294 (7th Cir. 1996), *cert. denied*, 117 S. Ct. 763 (1997). We are not so convinced in this case.

As we noted, the bankruptcy court made extensive findings relating to the value of the services provided by the Geraci firm to the various debtors here. The court first found that "these simple, straight-forward Chapter 7 bankruptcies do not take a significant amount of time or labor" and that Geraci's fee itemizations indicate that counsel spent an average of only thirty-six minutes preparing the various bankruptcy petitions. *Chellino*, 209 B.R. at 120. The court further found that the cases involved no novel or difficult issues, that no special expertise was required, that neither the clients nor

the circumstances of the cases imposed any time restrictions on the Geraci firm, that the results obtained were simply ordinary, and that the performance of the Geraci lawyers was "not up to a level that [the bankruptcy court] sees from the majority of practitioners who regularly appear before it." *Id.* at 120-22. Those findings are supported by the record and have not been challenged in this appeal.

The one finding that Geraci has contested relates to the customary fee in comparable cases. After considering the Trustee's evidence on the rates charged by area attorneys in straightforward Chapter 7 cases, and after conducting his own review of bankruptcy court records, Judge Fines found that the average fee charged in the locale for a no-asset consumer bankruptcy was $550. *Id.* at 120-21. Geraci does not suggest that this finding was erroneous. Nor does he dispute that his firm charged the twelve debtors here two to four times that amount. Geraci's argument instead is that under 11 U.S.C. § 330(a)(3)(E), the bankruptcy court was required to compare his fees to those charged by comparably skilled attorneys in nonbankruptcy cases, not to the fees charged by bankruptcy practitioners in this specific type of bankruptcy case. Section 330 and its legislative history in fact express a congressional intent "that compensation in bankruptcy matters be commensurate with the fees awarded for comparable services in non-bankruptcy cases." *In re UNR Indus., Inc.*, 986 F.2d 207, 209 (7th Cir.1993) (citing H.R. Rep. No. 595, 95th Cong., 2d Sess. 329-30, *reprinted in* 1978 U.S.C.C.A.N. 5963, 6286). But we do not think that gets Geraci very far in these cases. Geraci did not charge his clients by the hour, but quoted the clients a flat fee for the bundle of legal services required in a no-asset consumer bankruptcy. Thus, the bankruptcy court was unable to compare the hourly rates of Geraci lawyers to the rates

charged by comparably skilled practitioners in non-bankruptcy cases. Rather, the court was left to contemplate what such a practitioner would charge for a comparable bundle of services in a non-bankruptcy case. Yet nothing in the record establishes what attorneys in the community would charge in a non-bankruptcy context for such a comparable bundle of services. Indeed, nothing in the record indicates that there even exists a comparable bundle of legal services to which the services here may be compared. The bankruptcy court seemed to view this type of bankruptcy case as unique, given its straightforward, uncomplicated nature, and the fact that the Geraci firm quoted its clients a flat fee for the limited legal services provided. In assessing the reasonable value of those services, then, the court looked to comparable charges in the locale for this type of simple no-asset consumer case. We find that in the circumstances of this case, the bankruptcy court did not abuse its discretion in doing so. *See Mahendra*, 131 F.3d at 758 ("Considering the lack of complexity and the customary legal fees that are awarded in this community for planning, preparing, and filing the necessary schedules and petition for a Chapter 7 case," the bankruptcy court did not err in setting a reasonable fee.).

Geraci nonetheless relies on earlier decisions of this court, primarily on *In re Continental Illinois Sec. Litig.*, 962 F.2d 566 (7th Cir. 1992), to argue that he is entitled to the market value of the services his firm provided, not simply to the value that the bankruptcy court somewhat arbitrarily assigned to those services. And the market value, Geraci tells us, is the price that he was able to negotiate with his debtor-clients in the marketplace. Geraci is correct that market rates generally are considered presumptively reasonable in fee litigation in this circuit (*e.g.*, *Gusman v.*

Unisys Corp., 986 F.2d 1146, 1150 (7th Cir. 1993); *Pressley v. Haeger*, 977 F.2d 295, 299 (7th Cir. 1992)), but his reliance on cases of that sort is misplaced in this context due to section 329(b) of the Bankruptcy Code. Neither *In re Continental Illinois § Litig.* nor any of the other "market rate" cases Geraci cites involved section 329(b). As we indicated earlier, that section assigns to the bankruptcy court the task of determining the reasonable value of the services provided by a debtor's attorney. That reasonable value is not, as Geraci would have it, always the price that a willing debtor has agreed to pay a willing attorney in the marketplace, for by enacting sections 329 and 330 of the Code, Congress placed limits on the role the market will be permitted to play in setting professional fees in bankruptcy cases. *See Kenneth Leventhal & Co.*, 19 F.3d at 1178. Under section 329(b), the bankruptcy judge must determine the reasonable value of the services provided by the debtor's attorney after considering the surrounding facts and circumstances, including the customary fee in comparable cases. *See In re Bob Grissett Golf Shoppes, Inc.*, 50 B.R. 598, 608-09 (Bankr. E.D. Va. 1985). It is clear, then, that under section 329, an attorney like Geraci is not always entitled to the fee that the debtor has agreed to pay him. If that were true, Congress would essentially have performed a meaningless act when it authorized bankruptcy courts to review the fees of debtors' counsel and to take either of the authorized actions if the fees are found to be excessive. See 11 U.S.C. § 329(b).

To the extent Geraci acknowledges the bankruptcy court's powers under section 329(b), he asserts that those powers may be invoked only in two instances--where there is evidence of some type of overreaching on the part of debtor's counsel, or where counsel will be paid out of the bankruptcy estate and there has been no arm's length transaction to test

the reasonableness of counsel's fee. In authorizing bankruptcy courts to review and to reduce an attorney's fee under section 329(b), Congress clearly was attempting both to prevent overreaching by debtors' counsel and to preserve the assets of the bankruptcy estate for the benefit of creditors. See H.R. Rep. No. 595, 95th Cong., 2d Sess., at 329, *reprinted in* 1978 U.S.C.C.A.N. 5963, 6285 ("Payments to a debtor's attorney provide serious potential for evasion of creditor protection provisions of the bankruptcy laws, and serious potential for overreaching by the debtor's attorney, and should be subject to careful scrutiny."). Yet nothing in section 329(b) suggests that the bankruptcy court's powers may be exercised only where the court has found some evidence of "overreaching," or where counsel's fee would impact the estate. Rather, the bankruptcy court is authorized to act whenever it determines that the compensation the debtor has paid or agreed to pay his counsel exceeds the reasonable value of the services provided. No further finding is required. Thus, in order to affirm Judge Fines' disgorgement order, we need not decide whether, as the Trustee suggests, it should be considered "overreaching" for the Geraci firm to charge two to four times the average rate in the relevant locale. No finding of "overreaching" or of an impact on the bankruptcy estate is required before counsel's fees may be reduced under section 329(b). The bankruptcy court therefore did not abuse its discretion by ordering Geraci to disgorge a portion of his fees without making such a finding.

Having exhausted all viable challenges to the bankruptcy court's decision in these twelve cases, Geraci then shifts his focus to Judge Fines' decision to set a presumptively reasonable fee of $800 in all no-asset consumer bankruptcy cases filed by his firm. Geraci contends that the bankruptcy

court's order arbitrarily caps his fees at that amount, and that because the order applies only to him and not to other bankruptcy practitioners in the area, it violates his rights under the Equal Protection Clause. The district court found that Geraci had waived this constitutional challenge by failing to raise it before the bankruptcy court once the Trustee had requested Judge Fines to apply any holding on Geraci's fees to all pending and future cases filed by his firm.

Even if the argument was preserved, however, it is based on at least two flawed factual premises. The first is that there is any type of fee cap at issue in these cases. The bankruptcy court never placed any absolute limit on Geraci's fees; it instead required him to provide the court with an itemization of the services provided whenever his fee exceeds the presumptively reasonable amount. *Chellino*, 209 B.R. at 124-25. Given the number of routine, no-asset consumer cases handled by someone like Judge Fines, it is not an abuse of discretion for the court to set a presumptively reasonable fee and then to require documentation to substantiate a fee in excess of that amount. As one leading bankruptcy commentator explained it:

> A review of attorney's compensation is most appropriate in a nonbusiness or a consumer case under the Code. Local rules may place a presumptive limit on the amount of fees to be paid to the debtor's attorney for filing a consumer chapter 7 and chapter 13 case. By setting a standard maximum fee, courts seek to save time both for themselves and for debtors' attorneys in cases that are routine and quite similar to each other. Often, based on the [sic] their knowledge of the amount of

> time and effort necessary for a routine case, courts allow debtors' attorneys' fees within the standard maximum without requiring a detailed accounting of time spent.
>
> However, an attorney always has the right to demonstrate that additional fees should be awarded if the standard fee does not compensate the attorney fully for the time expended in the case on an hourly basis. Typically this will occur in cases that are more complex or require more time than the average case.

Collier on Bankruptcy ¶ 329.04[1][a], at 329-16 & 329-17.

To the extent Geraci suggests that the bankruptcy court's order applies only to him and not to other bankruptcy practitioners appearing before Judge Fines, the record indicates otherwise. Although the opinion and order entered in these cases refers only to Geraci, the record suggests that Judge Fines utilizes the same presumptively reasonable fee in all similar cases on his docket. In fact, counsel for the United States Trustee told us at oral argument that the clerk's office in Danville, Illinois, where these cases originated, requires a detailed itemization statement in any no-asset consumer case where counsel discloses a fee in excess of the presumptively reasonable amount. It is clear, then, that Geraci has not been singled out for disparate treatment. *See also, e.g., In re Michaelson*, No. 96-83059, slip op. at 17 (Bankr. C.D. Ill. July 31, 1997) ("[Geraci] is treated no differently than any other attorney who appears before this Court. The only thing different about this Court's treatment of the attorney is that he has seen fit to challenge the review procedure, which

works to set reasonable fees for bankruptcy cases, and in the process the attorney has conjured up the misconception that he is being singled out."). Accordingly, his equal protection claim must fail.

AFFIRMED.

PETER F. GERACI, APPELLANT,
VS.
EDWARD B. HOPPER II, as United States Trustee,
and JOHN E. MALONEY, as Chapter 7 Trustee,
APPELLEES.

NO. 97-CV-2057

UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF ILLINOIS

208 B.R. 907; 1997 U.S. Dist. LEXIS 7729

May 29, 1997, Decided
May 29, 1997, FILED

DISPOSITION: Affirmed.

COUNSEL: Peter Frances Geraci, Pro se, Chicago, IL.

U. S. Trustee, Peoria, IL.

JUDGES: Harold A. Baker,
Senior United States District Judge

OPINIONBY: Harold A. Baker

OPINION: ORDER AND OPINION

This is an appeal from a final order of the bankruptcy court in twelve consolidated cases.[1] n1 The bankruptcy court

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1 In re: *Aleta D. Chellino, Debtor*, 96-90941, Chapter 7;

considered the motions filed by the case trustee in the *Chellino* matter and by the United States Trustee in the remaining eleven cases to review the compensation paid the appellant, and for him to show cause for the fees charged to the debtors. The bankruptcy court allowed the trustees' motions challenging the fees and set $800 as a reasonable fee in each case and required the debtors' attorney, Peter F. Geraci, to reimburse the debtors for any amount they had paid over $800.The bankruptcy court further ruled that, in the future, Mr. Geraci was to submit written fee itemizations in all cases in which he sought a fee in excess of $800. Mr. Geraci has appealed the order and posted a supersedeas bond staying enforcement of the order below. The court has jurisdiction under 28 U.S.C. § 158(a).

"And it's greatly to his credit for he himself hath said it,"[2] Mr. Geraci is "the unquestioned foremost consumer bankruptcy practitioner in the country."[3] Mr. Geraci's submissions, both in this court and in the bankruptcy court, are a philippic directed against the case trustees, the United States Trustee, bankruptcy practitioners in the Central District of Illinois, and creditors generally. As the bankruptcy

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Dawn M. Wetherington, Debtor, 96-91203, Chapter 7; *Tracy L. Badley, Debtor*, 96-91204, Chapter 7; *Leroy & Judith Senesac, Debtors*, 96-91207, Chapter 7; *Paul & Bonna Mateer, Debtors*, 96-91208, Chapter 7; *Everett & Laura Hoseman, Debtors*, 96-91210, Chapter 7; *Sandra C. Evans, Debtor*, 96-91439, Chapter 7; *Melinda F. Penney, Debtor*, 96-91440, Chapter 7; *Robert & Dorothy Mailhot, Debtors*, 96-91441, Chapter 7; *Gerald & Susan Parks, Debtors*, 96-91442, Chapter 7; *Jerry & Linda Wisnewski, Debtors*, 96-91443, Chapter 7; *Patricia Alrandi, Debtor*, 96-91444, Chapter 7.

2 With apologies to Gilbert & Sullivan.

3 Debtors' Attorneys' Response P 7.

judge pointed out in his opinion, nothing in the record supports the appellant's diatribe against the whole bankruptcy community. His self aggrandizement and his pejorative remarks about bankruptcy practitioners are irrelevant. They have nothing to do with establishing a reasonable fee, within the meaning of 11 U.S.C. § 329, in a no-asset, run-of-the-mill, Chapter 7 case in the Central District of Illinois. And that is what this appeal is about.

Section 329 says in pertinent part: "(a) Any attorney representing a debtor in a case under this title, * * * shall file with the court a statement of the compensation paid, * * * and the source of such compensation. (b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to -- (1) the estate, * * * or (2) the entity that made such payment." The purpose of the statute is plainly stated and its meaning is obvious. The statute is to prevent overreaching by bankruptcy practitioners and preserve the assets of the estate for creditors. Section 329 is not a restitution provision, or a fee shifting statute like 42 U.S.C. § 1988. The cases referred to by the appellant in his brief arising under the principles applicable in the cited cases are not apposite to this bankruptcy situation.

The parties agree that the provisions of § 329 govern the case. What they disagree on is the meaning of "reasonable" in the statutory language. The bankruptcy court interpreted "reasonable" as requiring the application of the criteria established under 11 U.S.C. § 330[4] and interpreted in In

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4 § 330. Compensation of officers. (a)(1) After notice * * * and a hearing, and subject to sections * * * and 329, the court may award * * * reasonable compensation for actual,

reSmith, 48 B.R. 375 (Bankr. C.D.ILL. 1984). See also, *Bonner v. Coughlin*, 657 F.2d 931, 934 (7th Cir. 1981) (fee award under 42 U.S.C. § 1988 adopting ABA Code of Prof. Resp. factors.) Mr. Geraci insists that "reasonable" means only the market value of his services.

His fees are the market value, Mr. Geraci argues, because that is what his clients have agreed to pay him for his services. He argues that the market and not the judge should set the fees of debtors' attorneys in a Chapter 7 case and relies on *Matter of Continental Securities Litigation*, 962 F.2d 566 (7th Cir. 1992) as controlling this appeal. The reliance is misplaced. *Continental* is about as far removed from these no asset Chapter 7 cases as can be imagined. It was complex litigation involving a 45 million dollar settlement after years of preparation. But *Continental* was commercial litigation andthe Seventh Circuit made a very helpful suggestion that the bankruptcy judge apparently applied here. *Continental* suggests that finding "testimony or statistics concerning the fee arrangements in commercial litigation comparable to the present suit" would be a proper basis for determining a

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necessary services rendered by the * * * attorney, and by any paraprofessional person * * * * (3)(a) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including -- (a) the time spent on such services; (B) the rates charged for such services; (C) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title. * * * *

reasonable fee. 962 F.2d at 572-73. That is exactly what Judge Fines did in these cases. He reviewed the fees charged in similar cases by competent attorneys, experienced in bankruptcy matters in the Central District, and found that the average fee for a no asset, chapter 7 case was $550.

When asked to supply the bankruptcy court with fee itemizations, Mr. Geraci submitted itemizations that were deficient. The itemizations did not describe the services performed with particularity. Services were lumped together so that the court could not determine the time spent on individual services. The itemizations contained noncompensable billings for overhead. Failure to supply time records and accurate billing information will not support an award of fees. *Cauley v. Wilson*, 754 F.2d 769, 772 (7th Cir. 1985). Although Mr. Geraci admits, "I do not and have never billed my clients on an hourly basis,"[5] his itemizations show a claim of $185 per hour for his time. The record also shows that the work in the dozen cases in question was performed not by Mr. Geraci but by lawyers in his firm with at most five years experience. In the absence of accurate time records and an established hourly rate, it is impossible to take a lodestar approach to the value of a reasonable fee.

The bankruptcy court could find no basis in the record for Mr. Geraci's claims of superior services to the debtors or his "pre-screening" practices that avoided difficulties for the debtors. To the contrary, Judge Fines observed that the dozen cases were simple, no-asset matters that required about a one-half hour interview with the client and two brief appearance in court. Far from being superior. Judge Fines found that Mr. Geraci's service were quite ordinary and in some matters below the standards of other practitioners in

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5 Debtors' Attorneys' Response P 7.

the court.

The bankruptcy court made a thorough and detailed examination of the matters connected with the trustees' motions and set out findings and conclusions in a carefully considered thirty five page opinion. Judge Fines went through each of the twelve grounds to be considered in deciding what a reasonable fee would be as suggested in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). (Attorneys fees to a prevailing party in a civil rights case.) The court did not arbitrarily set a "medieval just price" but determined what is customarily charged in comparable commercial cases as suggested in *Continental* and by applying the factors in *Johnson*. Moreover, the bankruptcy judge did not limit Mr. Geraci to a fee of $800 in all future Chapter 7 no-asset cases. The court has directed that in future cases where he has made a fee arrangement for over $800, he must file a written fee itemization in that case. There is no abuse of discretion here in fixing fees. The bankruptcy judge was right in his legal conclusions and his factual determinations are certainly not clearly erroneous. *See, In the Matter of U.S. Golf Corporation*, 639 F.2d 1197, 1201 (5th Cir. 1981). (Determining award of attorneys' fees in a bankruptcy proceeding).

The appellant raises equal protection questions concerning the bankruptcy court's ruling that Mr. Geraci must file a fee itemization in future Chapter 7 cases in which he charges more than $800. Appellant did not raise this question in the lower court and he cannot raise it here. *Erff v. Markhon Industries, Inc.*, 781 F.2d 613, 618-19 (7th Cir. 1986).

The order of the bankruptcy court of December 27, 1996 is affirmed.

Enter this 29th day of May 1997.

Harold A. Baker

Senior United States District Judge

IN RE: ALETA D. CHELLINO, Debtor.
IN RE: DAWN M. WETHERINGTON, Debtor.
IN RE: TRACY L. BADLEY, Debtor.
IN RE: LEROY M. SENESAC and JUDITH A. SENESAC, Debtors.
IN RE: PAUL G. MATEER and BONNA L. MATEER, Debtors.
IN RE: EVERETT E. HOESMAN and LAURA L. HOESMAN, Debtors.
IN RE: SANDRA C. EVANS, Debtor.
IN RE: MELINDA F. PENNEY, Debtor.
IN RE: ROBERT C. MAILHOT and DOROTHY M. MAILHOT, Debtors.
IN RE: GERALD R. PARKS and SUSAN A. PARKS, Debtors.
IN RE: JERRY R. WISNEWSKI and LINDA L. WISNEWSKI, Debtors.
IN RE: PAMELA A. ALRANDI, Debtor.

Bankruptcy Case No. 96-90941
Bankruptcy Case No. 96-91203
Bankruptcy Case No. 96-91204
Bankruptcy Case No. 96-91207
Bankruptcy Case No. 96-91208
Bankruptcy Case No. 96-91210
Bankruptcy Case No. 96-91439
Bankruptcy Case No. 96-91440
Bankruptcy Case No. 96-91441
Bankruptcy Case No. 96-91442
Bankruptcy Case No. 96-91443
Bankruptcy Case No. 96-91444

UNITED STATES BANKRUPTCY COURT FOR THE CENTRAL DISTRICT OF ILLINOIS

1996 Bankr. LEXIS 1842

December 27, 1996, Decided

December 27, 1996, FILED

SUBSEQUENT HISTORY: As Amended December 30, 1996.

COUNSEL: Peter Frances Geraci, Chicago, IL.

JUDGES: GERALD D. FINES,
United States Bankruptcy Judge

OPINION BY: GERALD D. FINES

OPINION

These matters are before the Court on a Motion to Review Compensation of Debtor's Attorney Pursuant to Section 329 filed by the Case Trustee in *In re Chellino*, 1996 Bankr. LEXIS 1842, and upon a Motion to Show Cause filed by the U.S. Trustee in the other eleven cases captioned above. For the purpose of this Opinion, these cases have been consolidated in that the issue before the Court is the same in each case as are the interested parties.

The issue before the Court is whether the fees charged by Debtors' Counsel, Peter F. Geraci, in each of the above-captioned cases, exceeds the reasonable value of the services actually performed such that Debtor's Counsel should be required to return a portion of said fees to Debtors or their respective bankruptcy estates.[1]

The controversy presently before the Court originated with the filing of a Motion by the Case Trustee in *In re Chellino*, 1996 Bankr. LEXIS 1842, on August 20, 1996, wherein the

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1 Debtors' Counsel admits in his Response to the United States Trustee's Motion to Show Cause that this issue is governed by 11 U.S.C. § 329.

Case Trustee requested this Court to review fees charged by Debtors' Counsel to determine if they were excessive.[2] The Trustee's Motion in *Chellino* was set for hearing on September 5, 1996, and, on that date, Case Trustee, John Maloney, appeared on his own behalf and attorney Steven Diamond appeared on behalf of Mr. Geraci's law firm and Sabrina Petesch appeared on behalf of the U.S. Trustee. Arguments of the parties were heard on September 5, 1996, in *Chellino*, and the Court was advised by the U.S. Trustee's Office that it had just filed eleven Motions to Show Cause raising the same issue before the Court in *Chellino* in eleven other cases where debtors were also represented by the law firm of Peter F. Geraci. The Court determined that all twelve matters, including *Chellino*, should be heard together and, therefore, issued an identical Order in all twelve cases, on September 13, 1996, wherein Debtors' Counsel was ordered to:

> Submit a detailed, written fee itemization setting forth the services for which counsel requests compensation, and specifically detailing time spent in Court for and on behalf of the Debtor(s).

The September 13, 1996, Order set November 8, 1996, as a deadline for the filing of the fee itemization with a further hearing being scheduled on the matter for November 14, 1996.

I. Applicant's Response

On September 23, 1996, in *Chellino*, and September 25, 1996, in the other eleven cases, Debtors' Counsel filed

2 In the 12 cases before the Court, Debtors' Counsel has disclosed that fees were charged ranging from a low of $ 1,053 in *Wisnewski*, Case No. 96-91443, to a high of $ 2,052.16 in *Mateer*, Case No. 96-91208.

identical pleadings entitled "Debtors' Attorneys' Response to Motion of United States Trustee's Motion to Show Cause" and "Affidavit in Support of Response to Trustee's Motion to Show Cause Regarding Fees."[3] The main thrust of the Response filed by Debtors' Counsel was that the fees considered reasonable today by Mr. Maloney, the Case Trustee, and the U.S. Trustee may have been reasonable in 1974, but they aren't reasonable now. Debtors' Counsel further stated that:

> Completing a time itemization to prove the reasonableness of the fee charged is not indicated or authorized and would have no bearing on the reasonableness requirement.[4]

Debtors' Counsel concluded his Response by praying for an order:

> For a Rule to Show Cause why the United States Trustee, M. Scott Michel, and Sabrina Petesch, attorney for the U.S. Trustee should not be held in contempt of Court for attempting to fix prices for consumer bankruptcy, and foster unfair competition, and for Rule 11 sanctions.[5]

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3 The only pleading which Debtors' Counsel was directed to file at that time was a fee itemization for each case. The pleadings filed by Debtors' Counsel on September 23 and 25 do not support or substantiate the fees charged in these cases, but some of the matters raised therein do merit brief discussion.

4 This assertion is contrary to established case law and the clear language of the Bankruptcy Code found in 11 U.S.C. §§ 329 and 330.

5 This request by Debtors' Counsel totally lacks any basis in either fact or law, nor is it relevant in any way to the

Evidently, Debtors' Counsel did not feel fully vindicated by his assertions and allegations filed in his Response, on September 23 and 25, 1996, in light of his additional remarks included in the Affidavit attached to the Response. In an effort to convince the Court that the fees at issue are justified and reasonable, Debtors' Counsel makes nineteen numbered statements, some of which merit a brief discussion here.

In paragraph No. 1 of the Affidavit, Mr. Geraci states:

> "My law firm is chosen by more debtors than any other law firm in the world, to represent them in consumer bankruptcy cases."

The Court notes that it has no way of knowing whether this representation is based in fact or not, but it is able to conclude that, regardless of the veracity of the statement, it does not serve to support or substantiate the fees requested by Debtors' Counsel.

At paragraph No. 4 of the Affidavit, Mr. Geraci states:

> The fee charged in this case is no more than I have routinely charged in thousands of cases in the last 4 years, and is based on a flat fee for services through discharge in the case. The trustee's attempt to trivialize this case shows no understanding of consumer bankruptcy law and is contemptuous of the Court.

As for the first sentence of this statement, the Court can only review the quality of the legal work in the cases before it. The comment about the Trustee's lack of understanding of consumer bankruptcy law and that the U.S. Trustee should be held in contempt of Court is without any merit or support. In over nine years, this Court has had the opportunity to

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issue presently before the Court.

view the work of Trustee Maloney and various attorneys from the U.S. Trustee's Office in hundreds of cases, and their work has always been knowledgeable and competent, as it has been in the cases presently before the Court.

In paragraph No. 5 of his Affidavit, Mr. Geraci seeks to justify his fees by comparing them to filing fees, with the conclusion that, had his fees kept pace with the increases in filing fees, he would be charging $2,400 to $4,800 in "simple" cases. The comparison suggested by Mr. Geraci is illogical and wholly irrelevant to the issue at bar. Mr. Geraci attempts a similar comparison in paragraph No. 6 between his fees and trustees' fees, which is no more logical or relevant than a comparison of attorney fees and filing fees.

At paragraph No. 7, Mr. Geraci touts that he is "the unquestioned foremost consumer bankruptcy practitioner in the country." Mr. Geraci further says that:

> I do not and have never billed my clients on an hourly basis. I consider hourly billing to be fraudulent in most cases and apparently the Bankruptcy Code as well as 11 U.S.C. § 701 does not recognize "The Lodestar Analysis" as the correct measure in determining reasonableness of fees.[6]

Here again, the Court has been given no basis other than Mr. Geraci's word that he is the "unquestioned foremost consumer bankruptcy practitioner in the country," but that status is not exemplified by the work product of his law firm in the cases now before the Court and on the particular issue at bar. As for Mr. Geraci's statements about hourly billing and the use of the "Lodestar Analysis," the Court would only

6 Despite his stated disbelief in hourly billing, Mr. Geraci did file fee itemizations in all twelve of the cases before the Court broken down by minutes at an hourly rate of $ 185.

comment that hourly billing is clearly a widely used and accepted method of billing, and this Court is aware of no decision finding that hourly billing, in and of itself, is in any way inherently fraudulent. The Court would state further that, while it agrees that use of a "Lodestar Analysis" alone is not a proper method to determine reasonableness of fees, it is an appropriate factor to consider together with many others.[7]

At paragraph No. 10 of his Affidavit, Mr. Geraci accuses this Court of artificially maintaining fees for consumer bankruptcy cases "at an unreasonably low level by its $600 benchmark order in Danville, and an $800 order in Peoria." In addressing this statement, the Court must note that there are no such orders. The Courts in the Central District have a policy of reviewing fees in Chapter 7 cases when they exceed $600 to $800 in typical, straight-forward, no asset situations, and to require a written fee itemization for fees in excess of these amounts. There has never been an attempt to place a cap on fees in such Chapter 7 cases in the Central District of Illinois. The policy followed is merely in keeping with the mandate of 11 U.S.C. § 329. If a fee itemization supports the fee requested, this Court allows the fee even where fees exceed $600 to $800.

As he did in paragraph Nos. 5 and 6, Mr. Geraci again seeks to justify his fees by comparison to other costs of services and goods between Central Illinois and Chicago. In paragraph Nos. 11 and 12, Mr. Geraci states:

> 11. The only price in Central Illinois that is lower than anywhere else in Illinois is the cost of some housing. Cars are sold at the same or higher prices than in Chicago. Utility costs are the same. Long distance services are a dime a minute or higher. Food costs are virtually identical. It would be a shock to the professors

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7 *In re East Peoria Hotel Corp.*, 145 B.R. 956 (Bankr. C.D. Ill. 1991).

at Southern Illinois University at Carbondale, Illinois State University, and the University of Illinois at Champaign to be ordered to cut their salary in half, because of the simple fact that they happen to be located in Central Illinois. The salaries for the excellent judges and their staff in the Bankruptcy Court and the U.S. District Court are identical to those in Chicago, and so is the filing fee, the interim trustees' compensation, and the salary of the U.S. Trustee and its attorneys and staff. I will charge less than I do in Chicago and Rockford and Northwest Indiana if they will. There is no basis for bankruptcy attorneys to be the only services in the Central District that are 1/3 to 1/4 of the cost of comparable services, when the cost of goods, and salaries, and everything else, is the same.

12. Rents for office space in downtown Peoria are actually higher than in downtown Chicago. I pay $16 per square foot for a Class B (Chicago standards) building suite with a lake view. In Peoria, comparable space, with none of the amenities, such as 24 hour doorman, security, and many other building services, is the same price. No view, no doorman, and the buildings in Peoria lock their doors at 5 P.M. Yet they charge the same price. Gasoline is the same price in Central Illinois, and in Peoria, a cheeseburger with fries across from the Courthouse is $7.95 at lunch, and the beer is $2.00.

These assertions are nothing more than "a frolic and a detour," and the Court sees neither the need nor requirement of addressing them further. Suffice it to say that Mr. Geraci is mistaken in his belief that this information is

either helpful or relevant in establishing the reasonableness of his fees.

Perhaps the most curious and intriguing assertions made by Mr. Geraci appear at paragraph No.13 of his Affidavit where he states:

> The U.S. Trustee only allows lawyers who work for banks to participate in the program. A good example is John Maloney, an interim trustee, whose office in Normal is across the street from Busey Bank, his largest client. He refers his consumer bankruptcy leads to an attorney in Normal. Mr. Maloney has office space for rent on the second floor of his building for $500 per month, that would not rent for $100 per month in Chicago, if it were even rentable. The bank is allowed to choose its counsel, but debtors' attorneys must settle for the cheapest services rendered by attorneys who frankly cannot make a living doing bankruptcy work exclusively for debtors. My firm is not in that category, and my services and expertise cannot be compared to attorneys who have been forced to do work for artificially low prices by arbitrary Court orders and pressure from the U.S. Trustee. The banks, finance companies and trustees have a substantial interest in seeing debtors limited to ill-paid and ill-prepared counsel. That results in more asset cases for the trustees, and more favorable reaffirmations to banks, and more money paid to creditors as a result of bad advice to debtors. Debtors are entitled to strong, competent counsel and are perfectly willing to pay a reasonable fee for it. The debtor in this case is an intelligent, normal working class citizen, perfectly able to go to

> any lawyer other than this firm if the debtor desired to. Debtors are faced with a formidable array of creditors, who are sophisticated national operations who charge the same interest in Danville that they charge in New York City, and are faced with hostile interim trustees representing creditors, a hostile U.S. Trustee, and hostile, well-paid creditor representatives and creditor attorneys. To say that debtors are fair game in this district, and cannot select their own counsel, and must be prohibited from retaining my firm at reasonable rates which are still below those of comparable services and creditor attorneys and trustee fees, is wrong.

To characterize these statements as "strange" would be an understatement. This Court has never seen use of such bald, baseless assertions in an affidavit to support any position, let alone to support the reasonableness of one's fees. This Court is aware of no evidence that would support any of these assertions, and the Court has never detected a hint of what Mr. Geraci alleges in any of the thousands of cases it has reviewed since August 1987, nor would it condone such. Furthermore, the Court fails to see the relevance of any of what is averred in paragraph No. 13.

As he did in paragraph No. 13, Mr. Geraci appears to go on the offensive against the U.S. Trustee and local practitioners in paragraph No. 15, where he states:

> The U.S. Trustee is well aware of the practice of certain attorneys in consumer bankruptcy cases to file cases in court with "no money down". In other words, the consumer pays nothing pre-petition, and some attorneys even lend them the filing fee. The attorney

has them sign a contract with penalties and collection costs clauses, and a wage assignment, or even post dated checks. This is done for anti-competitivereasons. Then, the attorney collects, post-petition, on his pre-petition contract. This is in directly violation of the Code, and trustees across the country have brought actions to stop this practice. However, the United States Trustee here has done absolutely nothing about it, even though I have complained to his attorneys several times. He favors those firms, and likes to oppress any debtor attorneys who seek to regularly practice in this area. The Court should sua sponte issue an Order in that matter if it is interest (sic) in protecting debtors. "No money down" practitioners can drive others out of the practice or drive their fees down in an anti-competitive manner. I have watched "fee-wars" in the bankruptcy area, and when the fee gets down to $200 or so, the next jump is to "no money down", to conceal the true fee. After that, the next method of driving out competition is "we advance the filing fee". Therefore, price rather than quality becomes the selling point. I charge a fair price for my services, I disclose it up front, and I compete based on a high level of quality, service and reliability. It is unfair of the trustee and this Court to try to put me out of practice by driving my fees down while favoring occasional practitioners and attorneys that should be disbarred for collection of fees post petition based on pre-petition contracts. Why do the Court and the trustee not move to have those illegally collected fees disgorged? Perhaps the District Court and the 7th Circuit can accomplish this.

As for paragraph No. 15, the Court will only comment here that none of these assertions are supported by fact, nor are they relevant to the issue presently before the Court.

In paragraph No. 16 of his Affidavit, Mr. Geraci states that:

> Fees mentioned by the Trustee of $450 to $700 are for attorneys who do not regularly practice bankruptcy law, but do general practice, and in my opinion, are so low as to encourage fraud and neglect.

This statement is not accurate. Nearly 10,000 cases will be filed in this District in 1996. There are numerous attorneys in the Central District of Illinois who would be considered regular bankruptcy practitioners who routinely charge between $450 and $700 for the exact same type of cases that are presently before the Court. Mr. Geraci may believe that fees in this range encourage fraud and neglect, but this Court has not seen evidence of this in any of the thousands of cases it has reviewed.

At paragraph No. 17 of his Affidavit, Mr. Geraci states:

> There will always be some attorney who charges less than another. That is the case in Chicago also. Some attorneys here charge $400. I do not represent people for $400. The trustee's attitude is that all bankruptcies are alike, and all consumers should have $400 attorneys. The trustee has obviously never practiced law in a private setting. If the trustee is correct in his reasoning in Central Illinois, it can be applied anywhere in this country, and the result will be to sink the fees in consumer bankruptcy to the level of the

> lowest. What has happened in Chicago historically is that the lower priced practitioners have either left the practice of law, or been suspended or disbarred.

The only comment the Court would make here is to say that Mr. Geraci has obviously misconstrued the argument of the U.S. Trustee. The U.S. Trustee has never represented or argued that all bankruptcies are alike, nor has it ever been argued that all consumers should have "$400 attorneys."[8] In fact, the U.S. Trustee clearly recognizes that some attorneys do, in fact, charge $700 in fees to represent debtors in cases substantially similar to the cases at bar.

Mr. Geraci concludes his Affidavit, at paragraph Nos. 18 and 19, wherein he states:

> 18. No judge or the trustee has been interested in the problem of over-compensation of the Trustee or interim trustees. Chapter 13 trustee fees are at the maximum statutory level, and have never been reduced in this District in the last 10 years, even though rising caseloads and higher payments should accomplish some efficiency. Interim Trustees are routinely handed $6,000.00 to merely accept the proceeds of a personal injury case grossing $40 or $50,000.00, where all of the work has been done by the personal injury attorney. It is obvious that the trustee is interested in protecting those creditor lawyers, while keeping debtor lawyers off the trustee panel, and attacking consumer specialists. The

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8 No one could argue that all bankruptcies are alike, but anyone familiar with Chapter 7, no-asset cases would agree that there are many significant elements that are the same from one case to another.

> interim trustee is also allowed to double dip by hiring his or her friends as the attorney for the trustee, and courts routinely approves (sic) their "hourly" rate at $150 to $200 per hour.
>
> 19. Consumer bankruptcy attorneys representing creditors routinely tack on $200.00 or more to send out a form reaffirmation. There is not more than an hour of work in that. Often, there is no attorney involvement in it, is is (sic) a form that is filled in by a clerk, yet the person paying it, the debtor, is charged $200. The trustee argues that compensation of $450 to $700 for 6 months or more of involvement, risk and responsibility is fair, yet rubber stamps the debtor's charges for work performed by creditor attorneys, which is tacked on to his car note or mortgage. They routinely charge $2000 for a foreclosure action, and routinely charge $200 to $400 for a form motion to modify a stay which is agreed. My charges should be $2000 if I charged at their rates, which are not excessive. To be attacked for charging rates that are half of what creditor attorneys charge for the same work is unfair.

To the extent that any of these statements could ever be supported by concrete evidence, the Court finds that they are not relevant to the issue at hand, nor do they, in any way, substantiate the fees sought in the twelve cases now before the Court.

II. Applicant's Fee Itemizations

On October 15 and 16, 1996, Debtors' Counsel filed written fee itemizations in each of the twelve cases before the Court together with an Addendum which purportedly

supports the fees charged in each case. Although the Court has carefully examined each fee itemization separately, the discussion here will be limited to matters of general similarity in all of the itemizations.

In evaluating attorney fee applications and itemizations the Court must consider the following areas:

> (1) Are the services that are the subject of the application properly compensable as legal services?
>
> (2) If so, were they necessary and is the performance of necessary tasks adequately documented?
>
> (3) If so, how will they be valued? Were the necessary tasks performed within a reasonable amount of time and what is the reasonable value of that time?

See: In re Wiedau, 78 B.R. 904 (Bankr. S.D. Ill. 1987), citing *In re Wildman*, 72 B.R. 700 (Bankr. N.D. Ill. 1987). *In re East Peoria Hotel Corp.*, 145 B.R. 956 (Bankr. C.D. Ill. 1991).

In order to support a fee application, a time itemization must list each activity, its date, the attorney who performed the work, a description of the nature and substance of the work performed, and the time spent on the work. Wiedau, supra, at 907. Time entries for telephone calls, conferences, and letters must state the purpose or nature of the service and the persons involved. *Id.* at 908. Each type of service must be listed separately with the corresponding specific time allotment. Services may not be lumped together. Additionally, time expended must be reasonable in light of the results obtained. *In re Mid-State Fertilizer Co.*, 83 B.R. 555 (Bankr. S.D. Ill. 1988); and *In re Prairie Central Railway Co.*, 87 B.R. 952 (N.D. Ill., E.D., 1988).

In evaluating the fee itemizations presently before the Court, the Court must note that none of them fully comply with the standards set out above. Many of the time entries do not sufficiently describe the service being performed. Time entries such as "Creditor called, Household Bank" are not sufficient to support compensation for the time purportedly spent on that service. Many of the services are lumped together such that the Court is unable to determine the amount of time spent on each individual service.[9] Time entries falling into either of these two categories cannot form the basis for the compensation requested. The fee itemizations further show time billed at $75 per hour for "Clerk" time. The U.S. Trustee has objected to this time as uncompensable. Mr. Geraci accurately points out that Courts in this District have allowed billing of paralegal time at $75 per hour; however, the time itemizations do not indicate that paralegals actually performed the services at issue. Based upon the information found in the itemizations, the Court must consider "Clerk" time asuncompensable billing of overhead, which is forbidden in the Bankruptcy Code and supporting case law.

From its review of the twelve cases at bar, the Court concludes that, while these cases involve different debtors, different creditors, and other subtle differences, these cases are essentially the same type of case. These cases are all simple, no asset Chapter 7 cases that involved very little time in Court.[10] Only one of the cases had a priority creditor, and

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9 The itemizations supplied by Debtors' Counsel indicate that Counsel is either unable or unwilling to supply detailed information from which the Court can properly evaluate the services performed.

10 *In re Chellino* was filed as a no asset Chapter 7; however, the Trustee concluded after the § 341 hearing that the Debtor had one asset that needed to be liquidated for the benefit of her creditors.

all of the cases had relatively few total creditors. No motions to avoid liens were filed in any of these cases, and there were only two cases in which there were motions filed relating to anything other than the issue at hand. Some reaffirmations were filed in these cases, but the number filed in each case was relatively normal. In all but one case, the number of reaffirmations actually filed was less than the number that Debtors stated they intended to file. In all but one of the cases, the only other Court appearance by Debtors' Counsel, besides the § 341 hearing, was on the fee matters at bar.[11]

Having set out the numerous similarities in the twelve cases at issue, the Court will further note that the fee itemizations are also similar in that none of the fee itemizations add up to the amount actually charged by Debtors' Counsel as disclosed on the Rule 2016(b) Statement filed in each case.[12] The Court also notes that attached to each itemization is an Addendum that is identical in every case.

III. Applicant's Addendum to Time Itemization

In addition to a time itemization, most Courts require a narrative be filed which more fully describes a given case by setting out the issues to be dealt with, the goals sought to be achieved, and the plan for achieving those goals. In keeping with this requirement, Debtors' Counsel has attached a document entitled "Addendum to the Itemization." This Addendum is identical in each case and states what services

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11 In *Chellino*, Debtor's Counsel hired local counsel to attend the § 341 hearing. As such, Counsel's only Court appearance in Chellino involved the fee matter presently before the Court.

12 Nine of the twelve itemizations show less fees than actually charged, while three of the twelve itemize a bit more than was actually charged.

Debtors' Counsel would render in a hypothetical Chapter 7 case, rather than the services actually performed in each case before the Court. As such, this Addendum is not relevant to any particular case, nor supportive of the fees charged in a particular case.

As in his Affidavit attached to his Response to the U.S. Trustee's Motion to Show Cause, Mr. Geraci makes numerous assertions in his Addendum that merit brief comment by the Court. On the first page of the Addendum, Mr. Geraci states:

> We are not a solo practitioners (sic) who, with all due respect to fellow attorneys, may be without malpractice insurance or assets, who maintains inadequate staff and offices, who does not answer the phone, relying instead on an answering machine or a secretary, and who may not be reporting his or her income correctly. The IRS has identified solo practitioners as a group who cheat on their taxes. Taking shortcuts, not running a first class office in accordance with accepted business practices, not being able to back up their advice with adequate resources, and being able to accept less money because other fees, such as traffic and divorce, are not accurately reported as income, may be a large part of our "competition" that the trustee claims charge less.

These unsupported allegations against solo practitioners are not relevant to the issue at bar nor do they in any way serve as a justification for the fees charged in the subject cases. Mr. Geraci goes on to state:

> We never represent creditors, have no ethical conflicts in that regard, and are

> aggressively and without reservation true representatives of our client, not apt to sign off on documents because of hidden interests and relationships common to small town practice.

This statement was shown to be inaccurate at hearing on November 14, 1996, in evidence which Trustee Maloney supplied showing that, at one point in time, his law firm contracted with Mr. Geraci to have Mr. Geraci perform certain creditor collection work. This arrangement did not work out and has since been terminated, but the fact remains that Mr. Geraci cannot accurately assert that he has never represented creditors. This statement is irrelevant in addition to its inaccuracy.

At the second page of the Addendum, Mr. Geraci avers that:

> The treatment of debtors in this District, by the Trustee and the interim trustees and the creditors, is terrible. In Peoria, for instance, debtors are interrogated as if before a grand jury, in front of all the other debtors, who are all scheduled to be there at the same time. They are called before a trustee who sits at the front of the room in the same position as a judge, made to sit in a chair at the front of the room and their attorneys are not permitted to sit next to them because "that is not customary." Their sad story is played out as at an inquisition, with creditors questioning them from across the room. The meeting room is small and cramped yet The U.S. Trustee has rented in the most expensive granite clad building in Peoria. The U.S. Trustee's space is large, but the debtors are shoved into a small hearing room with no

semblance of dignity.

Even though Mr. Geraci is entitled to his opinion about the treatment of debtors in this District, that opinion is not relevant to the inquiry before the Court, and such an opinion is not something called for in a narrative filed in support of a fee application.

Mr. Geraci continues by stating:

> There is no bankruptcy bar for the debtors in Peoria, just occasional practitioners, or small volume, solo practitioners who have 4 line ads in the Peoria Journal Star advertising any case for $400, just like they are selling cans of soup. The local Creditors and banks who make political contributions to the U.S. Trustee's relatives are the same banks and creditors that are behind this attempt to run us out of town. They like things cozy, with a weak debtor bar, and the (sic) do not like the public having access to information about bankruptcy relief, from our firm, or access to quality legal representation.

This assertion, like many others made by Mr. Geraci, is not relevant to the subject issue, nor is it in any way supported by fact.

Mr. Geraci also indicates, at the second page of his Addendum, that:

> It is interesting that although Champaign is the major city in the central eastern part of the State, politics have kept any 341 meetings from being held in that location. Politics, as well as other forces, have set the 341 meetings all over the Central part of the State, in a

> crazy quilt patchwork of locations that looks like Bob Dole's recent campaign schedule in Illinois. Instead of setting 341 meetings in all 5 major cities, all easily accessible by expressway, they are set in many locations, which favors the small solo or the general practitioner, who does not service a wide geographic area. The nature of the Court call, and the natural geography of Illinois, has prevented any firm of any size from making a living representing debtors. Not surprising, the creditor attorneys in Central Illinois seem to be doing very well. This attack by the Trustee is just a transparent attempt to keep debtors from having representation of their choice, and information about bankruptcy, so debtors are kept in their miserable condition as much as possible.

Not only is this assertion irrelevant, but it is not supported in fact. The many different locations for § 341 meetings in the Central District were established for the benefit of all parties and had been established even before the U.S. Trustee Program came into existence. There is absolutely no basis to support Mr. Geraci's assertion that the establishment of various § 341 meeting locations was done to somehow favor the creditors and the Trustees over the debtors. This Court is keenly aware of its duty to protect the interests of all parties to a bankruptcy proceeding, and it carries out that duty to the fullest extent in every case before it.

In his Addendum, Mr. Geraci indicates a major part of his service includes "Pre-Screening for Problems." Mr. Geraci states:

> Our clients receive intensive screening to determine assets, preferences, transfers, potential adversaries and other potential

> difficulties. Many of these issues fall withinthe attorney-client relationship and are inappropriate to discuss in individual fee applications such as the Court has ordered. There is substantial value to the client to pre-screen cases. It lessens the likelihood of unanticipated problems which can cause even more turmoil for a family already laboring under the strain of burdensome debt. Inadequate inquiry into value of the home and personalty and their applicable exemptions can leave a family scrambling to buy out the Interim Trustee's interest in a homestead, car or furniture. This chaos is the sort of thing debtors seek to avoid when they apply for relief under the bankruptcy code. Our thoroughness allows them to avoid that uncertainty and unpleasantness. Our client may possess an asset but he or she is completely apprised of this fact and of what awaits them at their 341 examination prior to that examination. Of course, from the trustees' point of view, this is bad for them, because they will rarely, if ever, see an asset Chapter 7 from this office. Of course they will complain and try to destroy our practice, so that the occasional $600 practitioner can fumble asset cases into their laps. The other team does not want good coaching, or well paid players, to show up at game time.

The instant fee itemizations do not reveal the "intensive screening" Mr. Geraci refers to. In fact, in *Chellino*, which was filed as a "no-asset" case, the Trustee has discovered an asset which must be liquidated for the benefit of the creditors. As stated above, none of the cases presently before the Court involve complicated issues of preference, transfers, potential adversaries, or for that matter any other potential

difficulties. If such problems were, in fact, present in these cases prior to filing, the fee itemizations do not support a finding that there was "pre-screening" work which resolved such problems. The records of the twelve cases being considered in this Opinion do not reveal adversary proceedings and the time itemizations don't reveal any specific instances where time was spent preventing the filing of adversaries. In fact, the fee itemizations before the Court disclose only minimal personal contact with the Debtors. The Court finds it unlikely that any extensive pre-screening or pre-planning could be done in one initial interview with the Debtors lasting between 36 and 48 minutes.

Although the Court finds that much of the information contained in the Addendum is either irrelevant or unsupported in fact, the Court recognizes that some of the information is supportive of the services rendered by Debtors' Counsel. Most of the areas where Counsel's service is supported, however, are areas of service that all attorneys should and do render routinely. There is nothing in the Addendum to convince the Court that Mr. Geraci's firm has provided extraordinary services in any of the twelve cases under consideration.

In addition to the Addendum discussed above, Mr. Geraci has attached the following form affidavit (or a substantially similar form) to his fee itemizations. These affidavits are purportedly signed by various debtors that Mr. Geraci has or is presently representing in bankruptcy proceedings.

AFFIDAVIT IN SUPPORT OF DEBTOR'S ATTORNEY'S FEES

The undersigned hereby certifies under penalty of perjury:

1. I am _____ years old, have _____ years of education and my occupation is _____, and I consider myself competent to hire an attorney.

2. I have selected the law firm of Peter Francis Geraci as my bankruptcy attorney after careful consideration, and I am aware that I could have hired a number of other attorneys, and I agree to pay the fee of $_____ plus a money order for $175 payable to Clerk of U.S. Bankruptcy Court even though my attorney has told me I can find a cheaper attorney.

3. I understand that most attorneys who do this kind of work regularly work for the bill collectors, banks and creditors, and so does the U.S. Trustee who will examine my petition.

4. I understand that I could have hired a different attorney who may have charged me less in fees, such as $600 or $800, but I feel that you get what you pay for, and although the U.S. Trustee and some Bankruptcy Judges want to hold the attorneys fees of debtors' attorneys at 1975 levels, I feel that this results in driving smart lawyers out of the debtor bankruptcy field and I am choosing the law firm of Peter Francis Geraci after careful consideration.

5. I can afford to pay my attorneys fees and do not want the Court or Trustee interfering with my ability to hire a competent attorney of my own choosing.

Debtor _____ DATED: _____

None of the affidavits attached to the fee itemizations at issue is signed by debtors in the affected cases. The wording on the affidavits is obviously the wording of Debtors' Counsel and not of the debtors who purportedly signed the affidavits. These affidavits are thus clearly self-serving and without much relevance. The Court finds paragraphs 3 and 4 particularly unusual in that these statements are clearly outside of the normal scope of knowledge that a normal debtor would have, thus rendering the entirety of the affidavits suspect.

IV. Procedural Issues

Before making its conclusions of law, the Court finds it necessary to address certain procedural issues raised by Debtors' Counsel at hearing on November 14, 1996, and again in two Motions filed on November 25, 1996, in each case before the Court, entitled "Motion to Strike Attorney Affidavits Contained in Memorandum in Support of Motion to Show Cause and Reply to Response" and "Motion to Enlarge Time in Which to Supplement Record Pursuant to Federal Bankruptcy Rule 9006." As the Court noted above, the issue of the reasonableness of the attorney fees for Debtors' Counsel was initially raised by a pleading filed by the Case Trustee in *Chellino* in August of this year. The hearing was scheduled on that Motion for September 5, 1996, and an Order was entered on September 13, 1996, directing Debtors' Counsel to file fee itemizations in the twelve cases before the Court. A hearing was held on November 14, 1996, at which time the Court allowed the parties to introduce any material in addition to the written materials already before the Court. At hearing on November 14, 1996, Debtors' Counsel sought an extension of approximately 120 days for the purpose of taking depositions of certain local attorneys from whom the U.S. Trustee had elicited statements about the fees which they charged in routine no-asset Chapter 7 bankruptcy cases. The Court denied any extension of time as requested by Debtors' Counsel, but it did allow Debtors' Counsel 14 days in which to submit any further argument or evidence.

In support of her Memorandum in Support of Motion to Show Cause and Reply to Response, the attorney for the U.S. Trustee submitted certain transcripts and an audio tape of a Section 341 hearing in Kankakee, Illinois, where the attorney for the U.S. Trustee questioned certain debtors who were represented by Mr. Geraci's firm about their relationship with the firm and their feelings about the fees which they had

been charged. Additionally, the U.S. Trustee questioned four "local attorneys" who regularly practice bankruptcy in the Kankakee area concerning the fees which they charge in routine no-asset Chapter 7 bankruptcy cases like those presently before the Court. In reviewing the oral argument of Debtors' Counsel at hearing on November 14, 1996, and the pleadings filed on November 25, 1996, it appears to the Court that Debtors' Counsel is only seeking additional time in which to depose the attorneys which were questioned by the U.S. Trustee so that he may determine if the services which they rendered to their clients for the fees which they charged are comparable to the services which his firm rendered to the Debtors in the cases before the Court. There is nothing in either the oral argument of Debtors' Counsel or in the Motions filed on November 25, 1996, concerning the questions which were asked of the Debtors by the U.S. Trustee at the Section 341 hearing.

As stated above, at hearing on November 14, 1996, the Court denied the oral motion of Debtors' Counsel for an extension of 120 days in which to take depositions of the local attorneys who had been questioned by the U.S. Trustee. The Court finds it also appropriate to deny the written Motions filed on November 25, 1996, which essentially ask for the same relief sought by Debtors' Counsel in its oral presentation at hearing on November 14, 1996. The reasons for this denial are twofold:

1. The Court finds that Debtors' Counsel has been given adequate time and notice to conduct whatever investigations he felt necessary under the circumstances of these cases. Attorneys from Mr. Geraci's firm were present when the U.S. Trustee questioned the local attorneys about their fees in Chapter 7 cases and could have, at that time, made inquiries of the local attorneys themselves, but evidently chose not to do so. This fact, together with the ample time given to Debtors' Counsel to support the fees in the subject cases, leads the Court to the conclusion that Debtors' Counsel is

not entitled to any extension of time pursuant to Rule 9006 of the Federal Rules of Bankruptcy Procedure in that no cause has been shown for such an extension.

2. Although the information elicited by the U.S. Trustee from the four local attorneys practicing in the Kankakee area is helpful to the Court, this information is not essential.[13] In order to determine the customary fee for a no-asset straight-forward Chapter 7 case such as those before the Court, this Court need only look into the records of the numerous Chapter 7 cases filed before it within the last year to see that practitioners who regularly practice before this Court routinely charge between $400 and $700 for cases which are essentially the same type of cases as those presently before the Court, with the sum of $500 being the normal fee for two practitioners who have filed several hundred cases like those before the Court this year. The Court further notes that it does not need the information provided by the Trustee to evaluate the service provided by the local attorneys from which the information was elicited. This Court is familiar with the quality of the service of those local attorneys who were questioned by the U.S. Trustee as it is familiar with the quality of the service of all of the practitioners who regularly file bankruptcy cases before it. The quality and extent of the services of other practitioners before this Court are not presently at issue, but rather the quality and extent of the services provided by Mr. Geraci's firm are what is at issue. The Court finds that Debtors' Counsel has been given ample time and opportunity to provide any and all information in support of his fees as he saw fit.

V. Conclusions of Law

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13 *See: In re Smith*, 48 B.R. 375 (Bankr. C.D. Ill. 1984), wherein the Court states that, although not required, expert testimony may establish the customary fee within the locality.

The parties are in agreement that the applicable law in the matters before the Court is found at 11 U.S.C. § 329, which states:

> (a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.
>
> (b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to --
>
> (1) the estate if the property transferred --
>
> (A) would have been property of the estate; or
>
> (B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or
>
> (2) the entity that made such payment.

Although it is clear that § 329 of the Bankruptcy Code is applicable in this instance, there is disagreement on how the Court should determine the reasonable value of the services of Debtors' Counsel. Some Courts have suggested, as has the

U.S. Trustee, that the Court need only consider whether the fees of Debtors' Counsel are reasonable under the criteria established by § 329(b) of the Code. *See: In re Costello*, 150 B.R. 675 (Bankr. E.D. Ky. 1992). While other Courts and Debtors' Counsel suggest that the Court must consider the criteria established under 11 U.S.C. § 330 in order to determine the reasonable value of the service of Debtors' Counsel. This Court finds, as the Court did in *In re Smith, supra*, at 378, that the criteria for fixing attorneys' fees as found in cases under 11 U.S.C. § 330 are applicable to the determination of reasonableness under § 329. The applicable factors to determine reasonable of attorneys' fees and expenses are set forth in *Johnson vs. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), as applied to bankruptcy proceedings in *In re Smith, supra*, at 379. The factors set forth in *Johnson* are:

1. The time and labor required;

2. The novelty and difficulty of the questions;

3. The skill requisite to perform the legal service properly;

4. The preclusion of other employment by the attorney due to acceptance of the case;

5. Customary fee;

6. Whether the fee is fixed or contingent;

7. Time limitations imposed by the client or circumstances;

8. The amount involved and the results obtained;

9. The experience, reputation, and ability of

the attorneys;

10. The undesirability of the case;

11. The nature and length of the professional relationship with the client; and,

12. Awards in similar cases.

The first *Johnson* factor is the time and labor required. As the Court set out above, all of the cases presently before the Court, with the exception of *In re Chellino*, are no-asset Chapter 7 cases having many similarities. These cases are what could be best described as simple, straight-forward Chapter 7 bankruptcies which might, at most, require an attorney to make one court appearance in addition to his appearance at a Section 341 hearing. Mr. Geraci has stated that he rarely, if ever, files an asset case.[14] These simple, straight-forward Chapter 7 bankruptcies do not take a significant amount of time or labor. In this age of computerization, once information has been gathered to file a petition, the actual preparation of a petition takes very little time. In fact, the fee itemizations in these cases before the Court indicate that Debtors' Counsel spent an average of 36 minutes preparing the bankruptcy petitions. In fact, the fee itemizations indicate that the Debtors' Counsel charged almost as much time for the filing of the petition (30 minutes) as he did for the preparation. The Court finds this a bit odd in light of the fact that the petitions in question were mailed to the Court rather than having been filed in person. All in all, the Court finds that the amount of time and labor required to file a straight-forward no-asset Chapter 7 bankruptcy is not as extensive as Debtors' Counsel would have the Court believe.

The second *Johnson* factor is the novelty and difficulty of

14 See Addendum to time itemization, page 7, paragraph 1.

the questions involved in the case. In examining the twelve cases before the Court, the Court finds that there are no novel or difficult questions in any of these cases. As the Court has discussed above, these cases are quite similar in the fact that they appear to be very simple cases and that very little has been done in these cases beyond filing the bankruptcy petition, attending a Section 341 meeting and filing a few reaffirmations. As the Court noted above, none of these cases has any priority creditors with the exception of Hoesman in which the Court notes that there were $2,400 in priority taxes. None of the cases involved had motions to avoid liens filed in them, and only two of the cases had motions filed other than motions which were filed in regard to the fee matter presently before the Court. The Court further notes that Debtors' Counsel was only required to appear before this Court on one occasion other than the Section 341 hearing, and this, together with the other facts, leads the Court to easily conclude that the bankruptcy cases before it involve neither novel or difficult issues.

The third *Johnson* factor is the skill requisite to perform the legal service properly. As with factor Nos. 1 and 2, the Court finds that, under factor No. 3, no expert skill was required to perform the services in the twelve cases presently before the Court. These cases are routine, and the skill required to perform the legal services would be well within the grasp of the majority of competent practitioners who at least occasionally appear in bankruptcy proceedings.

The fourth factor in *Johnson* is the preclusion of other employment by the attorney due to acceptance of the case, There is no evidence that, by accepting any of the twelve cases presently before the Court, Debtors' Counsel was precluded from other employment. Mr. Geraci's firm has obviously filed many bankruptcy cases before both the Courts of the Northern District and the Central District of Illinois and has not shown that, by accepting a no-asset straight-forward Chapter 7 bankruptcy case, he is precluded

from other employment. This factor might be relevant in complex litigation; however, it has no bearing in cases such as are before the Court where the issues are simple and the work routine.

The fifth *Johnson* factor, the customary fee, is perhaps the factor that has generated the most disagreement between the parties. Mr. Geraci argues that this factor should not be considered at all, while the U.S. Trustee argues that it is a significant factor in that Mr. Geraci is charging two to three times the fees that other regular bankruptcy practitioners are charging in the Central District of Illinois for the same type of cases as are involved here. The Court agrees with the U.S. Trustee that the customary fee charged by other attorneys in this District is a critical factor in this case and one which must be examined.

In support of her position, the attorney for the U.S. Trustee supplied information from four Kankakee area attorneys which indicate that their rates for filing straight-forward, simple Chapter 7 bankruptcy cases range from $300 to $700. The Court is not at all surprised by this information and has conducted its own review of its records. The Court has found that two bankruptcy practitioners who were responsible for filing hundreds of cases in the Central District of Illinois this year routinely charge the sum of $500 for bankruptcy cases that are of the same exact type as those presently before the Court. The Court has also found that there are attorneys who actually charge less than $300 for straight no-asset Chapter 7 cases; however, the Court finds that such fees are not the norm, but are below average, with the average being approximately $550.

The sixth factor to be considered under *Johnson* is whether the fee was fixed or contingent. This factor encourages attorneys to accept otherwise undesirable cases and permits them to recover a possible large fee if the case is successful. *In re Smith, supra*, at 381, citing *In re Yermakov*, 718 F.2d

1465 (9th Cir. 1983), and *In re Warrior Drilling and Engineering Co., Inc.*, 9 B.R. 841 (Bankr. N.D. Ala. 1981). Given that the cases presently before the Court were not undesirable cases and the fees in them were flat fees, the Court finds that there is no adjustment necessary, nor any further consideration necessary of the sixth *Johnson* factor.

The seventh *Johnson* factor is the time limitations imposed by the client or the circumstances of the case. Under this factor, it is recognized that certain bankruptcy cases involve emergency action, a great deal of attention, and numerous or complicated adversary proceedings. *See: In re Smith, supra*, at 381. As has been stated repeatedly in this Opinion, the cases before the Court are not difficult cases. They involve very little out of the ordinary, and there is no evidence that these cases involved any significant time limitations imposed by either the clients or the circumstances of the case. In fact, in these cases, the Court finds that there was a substantial amount of time between the initial contact between the Debtors and Debtors' Counsel and the actual filing of the bankruptcy petitions, such that no argument can be made that any fast action was required on the part of Debtors' Counsel.

The eighth *Johnson* factor is the amount involved and the results obtained. The Courts assessing this factor consider the benefit accorded to the bankruptcy estate by the attorney services. *In re Smith, supra*, at 381. Matters such as the size and value of the estate are important in this factor. This was noted by the Court in *Smith* and has been noted by other Courts who have addressed the eight factor under *Johnson*. In reviewing the fee itemizations before it, the Court finds that apparently Mr. Geraci believes that attorneys' fees should increase based upon the amount of debt there is to be discharged from one case to another. This Court does not agree with this position and finds that, even though the number and amount of debts can have an affect on the amount of work done in a given case, in the cases presently

before the Court, as in most straight-forward, simple Chapter 7 cases, the actual amount and number of debts has only a negligible bearing upon the amount of work that is required. All of the cases presently before the Court are relatively simple, no-asset cases, and the Court can see no basis upon which to increase fees based upon the amount of debt being discharged. The eighth factor also considers the results obtained in a given case. As the Court has set out above, Mr. Geraci argues that his firm provides top-notch service. However, as the Court has noted, the fee itemizations and the Addendum to those fee itemizations do not support a finding that superior,expert service was provided to the Debtors in the cases presently before the Court. No outstanding results were achieved in these cases, and the Court finds no extraordinary benefits for either the Debtors or their creditors. The cases presently before the Court would have seen the same result had the services been performed by any competent counsel in a competent manner. Mr. Geraci does not want to he compared to other counsel as such a comparison shows that he is charging an excessive fee while obtaining a result no better than other competent practitioners who regularly appear before this Court.

The ninth *Johnson* factor is the experience, reputation, and ability of the attorneys. The Courts recognize that an experienced attorney normally is entitled to a premium fee, but longevity must be secondary to the skill exhibited by the attorney. *See: In re Johnson, supra*, at 719. Mr. Geraci holds himself out as being "the unquestioned foremost consumer bankruptcy practitioner in the country;" however, the attorneys whose names appear most on the fee itemizations in question and the attorneys who have appeared before this Court are relatively inexperienced.[15] Neither the fee itemizations or the experience of this Court indicate that Mr.

15 Attorneys who have appeared before the Court on these fee matters and who have supplied much of the written materials in these matters each have less than five years of legal experience.

Geraci himself has spent any significant amount of time on the cases at hand. The work product of Debtors' Counsel is not extraordinary. It is not outstanding. It is not up to a level that this Court sees from the majority of practitioners who regularly appear before it. The quality of the work product of Debtors' Counsel is clearly exemplified in his written and oral presentations regarding the issue now before the Court. The pleadings of Debtors' Counsel in this matter are not well written and they are not germane. Both the written and oral work of Debtors' Counsel indicate that he and his firm are either unwilling or unable to focus on the issue before the Court.

The tenth *Johnson* factor concerns the "undesirability" of the case. The cases at bar are not undesirable cases. They are routine cases, and they are cases which Mr. Geraci seeks to file. He has indicated that he does not file asset cases, and, with the exception of *Chellino*, the cases at hand are no-asset cases that involve no complex issues,

The eleventh *Johnson* factor concerns the nature and length of professional relationship with the client. This factor is not a significant factor, nor is it relevant to the cases at bar. There is no evidence that Mr. Geraci's law firm has had any long standing relationship with any of the clients that are the Debtors in these proceedings, nor would this factor carry any great weight if there was a showing that there was some prior relationship preceding the filing of the instant bankruptcy matters.

The twelfth *Johnson* factor, "awards in similar cases," is basically the same as factor No. 5, "customary fee." In analyzing this factor, the Court notes that Mr. Geraci has not argued that his fees are reasonable under any of the *Johnson* factors. Instead, his main argument is that his fees are reasonable because the "market" should control. As a basis for this argument, Mr. Geraci cites an Opinion by Judge Ginsberg, from the Northern District of Illinois, entered on

May 6, 1996, in the cases of *Rudolph* and *Marion Horvath*, No. 87-B-16757, and *Roger Battle, Jr.*, No. 88-B-11055, in which Judge Ginsberg approved Mr. Geraci's fee application in the amount of $975 in Horvath and $1,256 in Battle. As a basis for this Opinion, the Court stated:

> The Court no longer believes that a written opinion is necessary. Since 1990, courts seem to have had little difficulty determining the reasonableness of fees for attorneys who represent debtors in *Chapter 13 cases*. 11 U.S.C. § 330, as amended by the Bankruptcy Reform Act of 1994, provides standards which are applicable to attorneys who represent debtors in cases filed under *Chapter 13* of the Bankruptcy Code. These factors, in combination with the apparent ability of the market to determine the reasonableness of fees, vitiate the need for a written opinion. For these reasons, the Court strikes the part of the August 6, 1990 oral ruling in which the Court stated that a written opinion was to follow. These cases can now be closed. (emphasis added).

As for Judge Ginsberg's Opinion of May 6, 1996, the Court finds that it is of little precedential value. This Opinion related to Chapter 13 bankruptcy cases, and was issued in a one-page letter form nearly six years after the hearings had taken place.

Mr. Geraci has also submitted a "expert report" of one Henry N. Butler, J.D., Ph.D., entitled "Economic Impact of Maximum Fee Restrictions on the Market for Bankruptcy Legal Services." At paragraph 1 of this study, Mr. Butler indicates:

> I have been retained by the Law Offices of

> Peter Frances Geraci, J.D. to provide an economic analysis of the impact of a requirement that a lawyer's fee for handling a client's bankruptcy case be limited to the lowest rate charged by lawyers representing other bankrupt debtors before a particular court.

This is not the issue presently before the Court. The issue before this Court is whether the fees charged by Debtors' Counsel in the twelve cases captioned above are reasonable. This Court has no intention of limiting the fees of Mr. Geraci to the lowest rate charged by lawyers representing bankrupt debtors in this District because that rate is well below the average and the work may be performed in a below-average manner. In reviewing the conclusion of the economic study supplied by Mr. Geraci, it appears that the bottom line is that better lawyers should be allowed to charge higher fees. In this regard, as the Court has already stated, it must find that the attorneys that have appeared before it from Mr. Geraci's firm are not better lawyers In fact, the attorneys that have appeared on behalf of Mr. Geraci's firm are not as experienced or as competent as the majority of the practitioners who regularly appear before this Court. The Court can make no conclusions about Mr. Geraci's legal ability other than to review the written materials which he has supplied in conjunction with the issue before this Court. In so doing, the Court finds that Mr. Geraci has not exemplified himself as an outstanding practitioner, as he claims to be.

In addition to its opportunity to review the written and oral work of Debtors' Counsel, the Court has also had an opportunity to review many of the bankruptcy cases filed by Debtors' Counsel. In this regard, the Court finds that many of the bankruptcy petitions filed by Debtors' Counsel are not as thorough and as complete as most of the bankruptcy practitioners who regularly file petitions with this Court.

Many cases have been sent to this Court without filing fees, and, after a request has been made for those filing fees, the fees do finally appear, usually in the form of money orders sent directly from the debtors. The Court has also noted that many filings are made where the creditor matrix is missing and a request has to be made for that matrix. In fact, in a recent case filed on October 10, 1996, *In re Isaacs*, No. 96-91799, the case was filed without a Summary of Schedules and a Declaration Concerning Statement of Affairs. An Order had to be sent indicating that that case would be dismissed if those items were not supplied. In another case, *In re Morrical*, No. 96-91902, the case was filed missing a creditor matrix and other items. An Order was entered on October 22, 1996, giving Mr. Geraci's firm eight days to file the missing information. The Court held up on dismissing the case until November 15, 1996, when an Order was finally entered dismissing the case because the missing documents had not been supplied. Mr. Geraci's fee for representing the Morricals was disclosed as $1,395. On December 23, 1996, Mrs. Morrical called the Clerk about the status of her case and was very surprised that her case bad been dismissed and closed. This is not an example of competent service. All in all, the Court finds that the argument by the Debtors' Counsel that the "market" should control has failed to substantiate the fees charged in the instant cases. The economic study presented to the Court is flawed in that it is does not deal with the issue that is before the Court, and its conclusion that better lawyers should be paid higher fees does not support the fees requested by Mr. Geraci, because there has been no showing that the attorneys in Mr. Geraci's firm are, in fact, better than most of the practitioners that regularly appear before this Court.

The Court notes in applying a pure "Lodestar Analysis" to these cases it must conclude that the fees charged have not been substantiated as required by the case law. As stated above, many of the entries in the fee itemizations are not compensable due to the fact that they do not sufficiently

describe the service for which time is charged. Many of the entries are lumped together in a manner such that the Court cannot separate them out to determine whether time spent on each task was reasonable. Finally, the Court notes that it will not compensate Debtors' Counsel for the $75 per hour fee charged for "clerk" time in that said charges are not supported by any evidence that the tasks so performed required the services of a paralegal or were actually performed by a paralegal. This time will be considered by the Court as an inappropriate billing of overhead expense. *See: In re Lindberg Products, Inc.*, 50 B.R. 220 (Bankr. N.D. Ill. 1985); *In re Stoecker*, 114 B.R. 965 (Bankr. N.D. Ill. 1990); and *In re Convent Guardian Corp.*, 103 B.R. 937 (Bankr. N.D. Ill. 1989).

VI. Conclusion

Mr. Geraci claims that he is "the unquestioned foremost consumer bankruptcy practitioner in the country," and that his "law firm is chosen by more debtors than any other law firm in the world, to represent them in consumer bankruptcy cases." By this boast, Mr. Geraci attempts to cut a wide swath in this field of bankruptcy practice, but the modest to average legal performance of Mr. Geraci and of other lawyers in his firm combined with the relatively simple no-asset cases presently before the Court has not earned him the right to harvest the fees he seeks. Having reviewed all of the evidence and information before it, the Court concludes that an appropriate fee in each of the twelve cases at bar is the sum of $800. For administrative convenience and review in the future and at present, this Court chooses this sum even though it is above the average of $550. To the extent that Mr. Geraci has received fees in excess of $800 in each of the cases presently before the Court, he will be ordered to disgorge those sums to the respective debtors in the form of a cashier's check with copies being sent to the Court and to the U.S. Trustee as proof of the disgorgement. This holding will be applicable not only to the twelve cases presently

before the Court, but will be applicable to all pending cases filed by Mr. Geraci's law firm and future cases filed by Mr. Geraci in that the Court will allow him the option of either filing a detailed fee application where he seeks fees in excess of $800, or of accepting the sum of $800 without the requirement of filing any such fee application.

ENTERED: December 27, 1996.

GERALD D. FINES

United States Bankruptcy Judge

ORDER

For the reasons set forth in an Opinion entered on the 27 day of December 1996;

IT IS HEREBY ORDERED that:

A. Motion for a Rule to Show Cause why the United States Trustee, M. Scott Michel, and Sabrina M. Petesch, attorney for U.S. Trustee should not be held in contempt of Court for attempting to fix prices for consumer bankruptcy, and foster unfair competition, and for Rule 11 Sanctions, filed as part of the Debtor's Attorney's Response to Motion of United States Trustee's Motion to Show Cause, on September 23 and September 25, 1996, is DENIED;

B. Motion to Strike Attorney Affidavits Contained in Memorandum in Support of Motion to Show Cause & Reply to Response filed by Debtor's Counsel on November 25, 1996, is DENIED;

C. Motion to Enlarge Time in Which to Supplement Record Pursuant to Federal Bankruptcy Rule 9006, filed by Debtor's Counsel on November 25, 1996, is DENIED;

D. Motion to Review Compensation of Debtor's Attorney Pursuant to Section 329 filed by the Case Trustee in *In re Chellino*, 1996 Bankr. LEXIS 1842, is ALLOWED to the extent that compensation for Debtor's Counsel in *Chellino* shall be limited to the sum of $800, with Debtor's Counsel being ordered to return all sums in excess of $800 to the Debtor within ten days of this Order in the form of a cashier's check with copies being sent to the U.S. Trustee and to the Court;

E. The Motions to Show Cause filed by the U.S. Trustee on September 5, 1996, in each of the above additional eleven cases are ALLOWED to the extent that the Debtors' Counsel will be limited to a fee of $800 on each case with all sums paid in excess of $800 to be returned to the Debtors within ten days of the entry of this Order in the form of cashier's checks with copies being sent to the U.S. Trustee and to the Court as proof of payment; and,

F. Debtors' Counsel is further ordered to file written fee itemizations in all cases presently pending before the Court with the exception of those captioned above to the extent that he seeks fees in excess of $800 in those cases.

ENTERED: December 27, 1996.

GERALD D. FINES

United States Bankruptcy Judge

11 U.S.C. § 329. Debtor's transactions with attorneys

(a) Any attorney representing a debtor in a case under this title [11 U.S.C. §§ 101 et seq.], or in connection with such a case, whether or not such attorney applies for compensation under this title [11 U.S.C. §§ 101 et seq.], shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

(b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to--

(1) the estate, if the property transferred--

(A) would have been property of the estate; or

(B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or

(2) the entity that made such payment.

11 U.S.C. § 330. Compensation of officers

(a) (1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103-

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner,

professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

(2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the district or region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

(3) (A) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and

(E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4) (A) Except as provided in subparagraph (b), the court shall not allow compensation for-

(i) unnecessary duplication of services; or

(ii) services that were not-

(I) reasonably likely to benefit the debtor's estate; or

(II) necessary to the administration of the case.

(B) In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

(5) The court shall reduce the amount of compensation awarded under this section by the amount of any interim compensation awarded under section 331, and, if the amount of such interim compensation exceeds the amount of compensation awarded under this section, may order the return of the excess to the estate.

(6) Any compensation awarded for the preparation of a fee application shall be based on the level and skill reasonably required to prepare the application.

(b) (1) There shall be paid from the filing fee in a case under chapter 7 of this title [11 U.S.C. §§ 701 et seq.] $45 to the trustee serving in such case, after such trustee's services are rendered.

(2) The Judicial Conference of the United States-

(A) shall prescribe additional fees of the same kind as prescribed under section 1914(b) of title 28; and

(B) may prescribe notice of appearance fees and fees charged against distributions in cases under this title;

to pay $15 to trustees serving in cases after such trustees' services are rendered. Beginning 1 year after the date of the enactment of the Bankruptcy Reform Act of 1994, such $15 shall be paid in addition to the amount paid under paragraph (1).

(c) Unless the court orders otherwise, in a case under chapter 12 or 13 of this title, the compensation paid to the trustee serving in the case shall not be less than $5 per month from any distribution under the plan during the administration of the plan.

(d) In a case in which the United States trustee serves as trustee, the compensation of the trustee under this section shall be paid to the clerk of the bankruptcy court and deposited by the clerk into the United States Trustee System Fund established by section 589a of title 28.

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AUG 10 1998
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 97-1982

In the Supreme Court of the United States

OCTOBER TERM, 1997

IN RE PETER FRANCIS GERACI, PETITIONER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES TRUSTEE IN OPPOSITION

SETH P. WAXMAN
Solicitor General
Counsel of Record
FRANK W. HUNGER
Assistant Attorney General
WILLIAM KANTER
ROBERT D. KAMENSHINE
Attorneys
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTION PRESENTED

Whether, in limiting the attorney's fee petitioner can charge for simple, no-asset bankruptcy cases, the bankruptcy court abused its discretion in considering the fees charged for comparable bankruptcy cases in the locale.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-16a) is reported at 138 F.3d 314. The opinion of the district court (Pet. App. 17a-23a) is reported at 208 B.R. 907. The opinion of the United States Bankruptcy Court (Pet. App. 24a-64a) is reported at 209 B.R. 106.

JURISDICTION

The court of appeals entered its judgment on March 9, 1998. The petition for a writ of certiorari was filed on June 5, 1998. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Bankruptcy Code requires "[a]ny attorney representing a debtor in a case under this title" to file with the bankruptcy court "a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered * * * in connection with the case by such attorney." 11 U.S.C. 329(a). If the court concludes that the attorney's fee "exceeds the reasonable value of any such services," the bankruptcy court can cancel the fee agreement or order the return of any overpayment. 11 U.S.C. 329(b).

Section 330 of Title 11 sets out a non-exhaustive list of factors for courts to take into account in determining what level of compensation is reasonable for the payment of specified officers in bankruptcy proceedings. Attorneys are not included in the list of officers whose compensation is to be assessed under Section 330, see 11 U.S.C. 330, although many courts consult those factors for guidance in establishing reasonable fees. See Pet. App. 8a-9a (citing cases). In determining the amount of compensation that is reasonable under Section 330, courts consider, among other things, "whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title." 11 U.S.C. 330(a)(3)(A)(E).

2. Petitioner served as counsel in twelve consumer bankruptcy cases filed under Chapter 7 of the Bankruptcy Code, 11 U.S.C. 701 *et seq.* Pet. App. 2a. He charged his clients flat fees ranging from $1095 to $1900. *Id.* at 3a. The cases were "relatively simple,

no asset matters requiring minimal attorney time." *Id.* at 2a-3a. Attorneys in petitioner's firm "spent an average of only thirty-six minutes preparing the various bankruptcy petitions." *Id.* at 9a.

The Chapter 7 trustee in one of petitioner's cases requested the bankruptcy court to review the reasonableness of petitioner's fee under 11 U.S.C. 329. Pet. App. 3a-4a. The United States Trustee then investigated the fees charged by petitioner in other cases and concluded that the "fees were unreasonably high in light of the uncomplicated nature of the cases at issue." *Id.* at 4a. The United States Trustee accordingly challenged petitioner's fees in eleven cases. *Ibid.*, 11 U.S.C. 307; see Bankr. R. 2017 (11 U.S.C. App. 2017).

3. The bankruptcy court required petitioner to submit an itemization of the services provided in each case and conducted hearings on the reasonableness of the fees. Pet. App. 4a. The court then ruled that petitioner's fees were excessive. *Id.* at 7a, 62a. The court found that the average fee for "straightforward, simple Chapter 7 bankruptcy cases" in the area was $550, *id.* at 55a, and that petitioner had failed to substantiate the significantly higher fees that he charged. *Id.* at 62a ("[T]he modest to average legal performance of Mr. Geraci and of other lawyers in his firm combined with the relatively simple no-asset cases presently before the Court has not earned him the right to harvest the fees he seeks."). The court further noted that "[t]he itemizations supplied by [petitioner] indicate that Counsel is either unable or unwilling to supply detailed information from which the Court can properly evaluate the services

performed." *Id.* at 39a n.9.[1] Petitioner also failed to offer evidence of comparable fees charged by either bankruptcy or non-bankruptcy attorneys for analogous services. Pet. App. at 26a-37a.

Based on the evidence before it, the bankruptcy court concluded that a reasonable fee for petitioner's services in each of the twelve cases was $800, and ordered petitioner to disgorge any payments received in excess of that amount. The court further ruled that, in all future cases, petitioner would have the option of either providing detailed documentation supporting a fee in excess of $800 or accepting the $800 payment without the necessity of filing any application. Pet. App. 62a-63a.

The district court affirmed based on the bankruptcy court's "thorough and detailed examination of the matters," Pet. App. 22a, and petitioner's failure to offer any evidence justifying his fees, *id.* at 21a.

4. Petitioner appealed, and the court of appeals affirmed. Pet. App. 1a-16a. Petitioner, the court noted, had failed properly to document the fees charged. *Id.* at 4a-5a ("[Petitioner's] initial response to the court's order did not detail those services at all, but instead included a diatribe directed against the Trustee and bankruptcy practitioners in the Central District of Illinois."). The court of appeals also accepted the bankruptcy court's finding that "neither the experience, reputation, and ability of the attorneys from the Geraci firm, nor the results they had been able to obtain for their clients, justified the

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[1] The court found that none of the itemizations actually added up to the amount charged petitioner's clients. Pet. App. 40a.

significantly higher fees they had charged." *Id.* at 6a; see also *id.* at 10a.

The court of appeals also found unavailing petitioner's argument that the bankruptcy court should have compared his fees to those charged by comparably skilled attorneys in non-bankruptcy cases. Because petitioner charged a flat fee, the court explained, the bankruptcy court was unable to compare petitioner's hourly rates to those of non-bankruptcy practitioners. Pet. App. 10a-11a. Further, the record contained no evidence of what non-bankruptcy attorneys would charge for a comparable bundle of services. *Id.* at 11a. Under those circumstances, the court of appeals concluded, the bankruptcy court did not abuse its discretion in setting petitioner's fee based on comparable charges in the locale for similar bankruptcy cases. Finally, the court rejected petitioner's argument that the market, rather than the court, should define what fees are reasonable, explaining that Congress, through 11 U.S.C. 329, thought otherwise. Pet. App. 11a-13a.[2]

ARGUMENT

Petitioner contends (Pet. 3-7) that the court of appeals erred in failing to compare his fees to those charged by comparably skilled practitioners in non-bankruptcy cases. That claim is incorrect and, in any event, does not merit this Court's review.

Petitioner does not claim that the ruling of the court of appeals conflicts with any decision of this Court or with the rulings of any other circuit. Nor does he dispute that 11 U.S.C. 329 provides the rele-

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[2] The court also rejected petitioner's equal protection argument. Pet. App. 14a-16a. Petitioner does not seek this Court's review of that claim.

vant legal standard of reasonableness for evaluating his fees. Petitioner thus seeks an exercise of this Court's certiorari jurisdiction (Pet. 6-7) solely to review the court of appeals' application of the concededly correct legal standard to the particular facts of his case. That argument does not warrant further review for two reasons.

First, petitioner's claim presents no question of broad or enduring importance. The court's record-bound ruling regarding the amount of a reasonable fee petitioner may charge for a particular class of bankruptcy filings in Danville, Illinois, will have no significant impact on other cases, other practitioners, or other jurisdictions. Petitioner seeks only the correction of alleged error. Such claims do not customarily warrant this Court's review. See *Sumner* v. *Mata*, 449 U.S. 539, 543 (1981); *United States* v. *Johnston*, 268 U.S. 220, 227 (1925). Pure error review is particularly unjustified where, as here, the bankruptcy court, the district court, and the court of appeals all agreed in their assessment of the record and their application of the proper legal standard to it. See *Graver Tank & Mfg. Co.* v. *Linde Air Prods. Co.*, 336 U.S. 271, 275 (1949), adhered to on rehearing, 339 U.S. 605 (1950); see also *Exxon Co., U.S.A.* v. *Sofec, Inc.*, 517 U.S. 830, 841 (1996).

Second, no error occurred here. The court of appeals agreed that one factor courts should consider in evaluating the reasonableness of a fee is the value of a comparable bundle of non-bankruptcy services. Pet. App. 10a. Petitioner, however, bore the burden of justifying the reasonableness of his charges and thus of introducing evidence of analogous, non-bankruptcy fees. *Id.* at 9a (citing additional cases); cf. *Hensley* v.

Eckerhart, 461 U.S. 424, 437 (1983). The court of appeals concluded that petitioner wholly failed to meet that burden.

> [N]othing in the record establishes what attorneys in the community would charge in a non-bankruptcy context for such a comparable bundle of services. Indeed, nothing in the record indicates that there even exists a comparable bundle of legal services to which the services here may be compared.

Pet. App. 11a. Petitioner chose, instead, to justify his fees before the bankruptcy court by documenting the costs of cheeseburgers, gasoline, and rent. *Id.* at 31a.

Petitioner claims (Pet. 7) that the record contained affidavits "regarding fees of non-bankruptcy practitioners, all equivalent to or higher than what Petitioner charges." Petitioner does not claim, however, that those charges were for a comparable bundle of services. See Pet. App. 37a. In any event, disputes over the content of the record in a particular case do not merit this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General
FRANK W. HUNGER
Assistant Attorney General
WILLIAM KANTER
ROBERT D. KAMENSHINE
Attorneys

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In The

Supreme Court of the United States

October Term, 1997

IN RE PETER FRANCIS GERACI,

Petitioner

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY BRIEF OF PETITIONER

PETER FRANCIS GERACI, ESQUIRE
Counsel of Record
XIAOMING WU, ESQUIRE
Law Offices of Peter Francis Geraci
55 East Monroe Street
Suite 3400
Chicago, Illinois 60603
☎(312) 332-1800
Attorneys for Petitioner

Appellate Service: Curry & Taylor (800) 222-8738/Appellate@webtv.com

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ARGUMENT

Respondent incorrectly states that Petitioner does not "dispute that 11 U.S.C. 329 provides the relevant legal standard of reasonableness for evaluating his fees" (Brief in Opposition, 5-6). Section 329 is not a legal standard; it is only a source of authority. It merely allows the court to determine the reasonableness of fees and to order return of any excessive fees, without defining the word "reasonableness." To say that § 329 provides a legal standard amounts to saying that the standard for determining "reasonableness" is "reasonableness."

One should resort to legislative history "where the face of the [statute] is inescapably ambiguous." *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 395-396 (1951) (Jackson, J., concurring). *See also Oklahoma v. New Mexico*, 501 U.S. 221, 111 S. Ct. 2281, 115 L. Ed. 2d 207 (1991); *Garcia v. United States*, 469 U.S. 70, 76, 105 S. Ct. 479, 83 L. Ed. 2d. 472 (1984) (In surveying legislative history the Court has repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which "[represent] the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation"). This is why, in an effort to discern the meaning of "reasonableness" for purposes of § 329, it is important to consider the congressional discussion about the related sections such as § 330, made applicable to § 329 by the Seventh Circuit in *In the Matter of Wiredyne, Inc.*, 3 F.3d 1125 (7th Cir. 1993). Both the Bankruptcy Code itself and the related legislative history evince a clear congressional intent that the reasonableness of bankruptcy attorney's fees must be judged by the compensation for

nonbankruptcy attorneys, not the fees charged by competitors, as the lower courts held.

Second, the lower courts' rulings conflict with the long line of cases in the Seventh Circuit holding that the reasonableness of attorney's fees is determined by the market, not by the judge's personal opinion of the value of an attorney's service. *See, e.g., Matter of Continental Illinois Securities Litigation*, 962 F.2d 566 (7th Cir. 1992); *Gusman v. Unisys Corp.*, 986 F.2d 1146, 1150 (7th Cir. 1993); *Barrow v. Falck*, 11 F.3d 729, 732 (7th Cir. 1993); *Tolentino v. Friedman*, 46 F.3d 645, 652 (7th Cir. 1995).

Third, this petition is not just about "pure error review" in a particular case (Brief in Opposition at 6). As Congress pointed out, ensuring fair compensation for bankruptcy attorneys is critical to the smooth, efficient and expeditious operation of the bankruptcy system. H.R. Rep. No. 95-595, at 329-30, 95th Cong., 1st Sess. 330 (1977); *reprinted in* 1978 U.S.C.C.A.N. at 6286. This petition was filed in the midst of a dangerous nationwide trend to erode such policy, and therefore is of national significance. *See In re Yates*, 217 B.R. 296 (Bankr. N.D. Okla. 1998). This case is about judges rewriting the statute to discourage debtors' attorneys rather than encourage them as dictated by Congress. The case provides the Court with an opportunity to reverse that trend and ensure compliance with the Code and the underlying congressional policy.

WHEREFORE, Petitioner requests that this Court grant the petition for a writ of certiorari.

Respectfully submitted,

Peter Francis Geraci, Petitioner
The Law Offices of Peter Francis Geraci